Last page of docket

SHDKT PROCEEDINGS AND ORDERS DATE: [05/07/91]

CASE NBR: [90107226] CFX STATUS: [DECIDED]
SHORT TITLE: [Demos, John R.]
VERSUS [USDC ED Washington, et al.] DATE DOCKETED: [022591]
PAGE: [01]

	DATE	NOTE	PROCEEDINGS & ORDERS
1	Feb 25 1991	D	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
3	Apr 4 1991		DISTRIBUTED. April 19, 1991
5	Apr 22 1991		REDISTRIBUTED. April 26, 1991
7	Apr 29 1991		Petition DENIED. Opinion per curiam.

*** Related Case - Use VIDE,LS with SE ***

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NO. 90-7226

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 1991

JOHN ROBERT DEMOS JR,

(PETITIONER)

VS.

THE 9th CIRCUIT COURT OF APPEALS,

(RESPONDENT)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL
FOR THE 9th CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN ROBERT DEMOS JR
WASHINGTON STATE REFORMATORY
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MONROE, WASHINGTON.
(98272)

QUESTIONS PRESENTED

CAN STATE LAW CONFLICT WITH FEDERAL LAW???

CAN A STATUTE UNDER FEDERAL LAW BE "UNCONSTITUTIONALLY VAGUE"???

CAN CIRCUIT LAW CONFLICT WITH FELLOW CIRCUIT LAWS IN OTHER CIRCUITS????

CAN FEDERAL LAW CONFLICT WITH ONE ANOTHER, IN SUCH A WAY AS TO CREATE INHERENT CONFUSION, UNCERTAINTY, AND PROBLEMATIC DALLIANCE????

WILL THE U.S. SUPREME COURT SOLVE THIS QUESTION OF LAW, AND FACT (FACT), AND TAKE SUPERVISOI CONTROL OVER THIS MATTER????

WHEN THE INTENT OF CONGRESS IS UNCLEAR, WILL THE U.S. SUPREME COURT APPLY THE COMMON LAW, AND OR THE "RULE OF LENITY"???

SHOULD THE 9th CIRCUIT COURT OF APPEALS HAVE APPLIED THE "RULE OF LENITY" IN THIS CASE, BEFORE DISMISSING MY WRITS, AND MAKING SUCH A BROAD ORDER WHICH IN EFFECT PRECLUDES, PREJUDICALLY MY RIGHT TO EVER BRING A WRIT INTO THE 9th CIRCUIT AGAIN???

DID CONGRESS "INTENT" FOR THE IN-FORMA-PAUPERIS STATUTE TO APPLY "EQUALLY" TO THE RICH AND TO THE POOR, OR DID CONGRESS FAVOR, AND STRUCTURE IT'S LAWS SO AS TO TILT THEM TOWARDS THE RICH MAN?????

WILL THE U.S. SUPREME COURT DECIDE THE ISSUES HEREIN IN THE INTRESTS OF FEDERALISM, COMITY, AND EQUITY.?????

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

JOHN ROBERT DEMOS JR,

(PETITIONER)

VS.

9th CIRCUIT COURT OF APPEALS,

(RESPONDENT)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED

STATES COURT OF APPEALS FOR THE 9th CIRCUIT

---

(1). PRAYER OF THE PETITIONER

PETITIONER, JOHN ROBERT DEMOS JR, RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGEMENT & OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT, WHICH IN EFFECT "PREVENTS ME" FROM "EVER" FILING A WRIT OF ANY KIND INTO THEIR COURT AGAIN. I MUST ADD AS A FOOTNOTE, THE FACT THAT THE "ORDER" WAS NOT SIGNED, BUT WILL BE PUBLISHED BY THE COURT ANYWAY....

PETITIONER CONTENDS THAT THE U.S. SUPREME COURT HAS SUBJECT MATTER JURISDICTION IN THIS CASE, BECAUSE THE 9th CIRCUIT HAS BY IMPLICATION REPEALED AN ACT OF CONGRESS....

I PRAY THAT THE U.S. SUPREME COURT WILL SPEEDILY RESOLVE THIS MATTER, AND PUT IN ABEYANCE THE CONFLICTS OF LAW, AND FACT, AND THE CONFLICTS AMONGST THE CIRCUITS....

(11). OPINION BELOW

THE OPINION/ORDER OF THE 9th CIRCUIT COURT OF APPEALS WAS ENTERED ON FEBRUARY 7th, 1991; THE ORDER IS ATTACHED TO THE APPENDIX, FOR THE COURT'S INSPECTION, AND GENERAL PERSUSAL. I AM ALSO ATTACHING EXHIBITS THAT RELATE FROM THE STATE SUPREME COURT OF WASHINGTON....

(111). JURISDICTION OF THE COURT

28 U.S.C. 1251 THRU 1258;

ARTICLE 111 OF THE UNITED STATES CONSTITUTION;

62 STATUTE 928 & 828;

THE UNITED STATES CODE ANNOTATED;

(1V). CONSTITUTIONAL & STATUTORY PROVISIONS INVOKED

THE 14th AMMENDMENT OF THE U.S. CONSTITUTION;

THE 8th AMMENDMENT OF THE U.S. CONSTITUTION;

THE 1st AMMENDMENT OF THE UNITED STATES CONSTITUTION;

THE 13th AMMENDMENT OF THE UNITED STATES CONSTITUTION;

THE 5th & 6th AMMENDMENT OF THE UNITED STATES CONSTITUTION;

(V). STATEMENT OF THE CASE

ON FEBRUARY 7th, 1991 THE 9th CIRCUIT COURT OF APPEALS ENTERED AN ORDER WHICH PROSPECTIVELY PROHIBITS, AND DENIES ME THE RIGHT TO "EVER" FILE ANY WRITS INTO THE 9th CIRCUIT. "EVER" IS A LONG TIME.

THE 9th CIRCUIT IS SAYING IN EFFECT, DEMOS WE HAVE NO WAY OF PROVING THAT YOUR "FUTURE" ACTIONS/WRITS ARE GOING TO BE FRIVILOUS, BUT WE ARE ASSUMING/GUESSING THAT THEY WILL BE, THUS, WE ARE GOING TO ISSUE A "BAR ORDER/INJUNCTION" AGAINST YOU, DENYING YOU THE RIGHT TO FILE ANY WRITS INTO THIS COURT"...

THE COURT SHOULD NOTE THAT I AM INDIGENT/PAUPER, AND THAT I HAVE NO MONEY....

CONGRESS INTENDED THAT "ALL" OF IT'S CITIZENS EQUALLY ENJOY, AND BENEFIT FROM THE RIGHT TO PROCEED IN FORMA-PAUPERIS, AND THAT JUSTICE SHOULD NOT BE COMPARTMENTALIZED, AND BASED SOLELY ON WHAT AMMOUNT OF MONEY ONE HAS, AND IS ABLE TO PAY....

CONGRESS HAS BEEN RATHER VAGUE ON THIS ISSUE SINCE 1892 WHEN THE FORMA-PAUPERIS STATUTE WAS FIRST PUT INTO EFFECT, IT IS NOT CLEAR, WHETHER OR NOT THE COURTS HAVE THE AUTHORITY TO LIMIT A LITIGANT DUE TO THE NUMBER OF CASES THAT HE FILES, OR THE FACT THAT HIS WRITS, AND OR PLEADINGS MAY BE FRIVILOUS.....

ALSO, THE CIRCUITS ARE IN CONFUSION, AND CONFLICT, AND THEY DO NOT KNOW WHICH DIRECTION TO GO, THEY ARE WAITING FOR A LIGHT, A SIGN, A CLEAR RULING FROM THE UNITED STATES SUPREME COURT, THE LOWER COURT'S COMMANDER & CHIEF.

RIGHT NOW, THE RULE (RULE) OF LENITY HOLDS SWAY, AS THE COURTS MUST STATE THAT THEY "DO NOT CLEARLY KNOW JUST WHAT IS THE INTENTIONS OF CONGRESS ON THIS MATTER, THIS VERY ELUSIVE, AND ARDUOUS MATTER".....

I HAVE INCORPORATED A WRIT OF HABEAS CORPUS ALONG WITH THIS WRIT OF CERTIORARI, AND I PRAY THAT THE U.S. SUPREME COURT WILL NOT "BI-FURCATE" THEM, BUT WILL RATHER "CONSOLIDATE" THEM, AS THE ISSUES ARE PRIMARILY THE SAME....

(V1) REASONS FOR GRANTING THE WRIT

A: THE U.S. SUPREME COURT HAS NEVER DECLARED THAT ALL OF DEMOS' PLEADINGS ARE FRIVILOUS. (SEE U.S. SUPREME COURT NO. 90-6655)...

I HAVE NEVER BEEN WARNED, NOR ADMONISHED BY THE U.S. SUPREME COURT FOR FILING FRIVILOUS PETITIONS, AND I HAVE FILED QUITE A FEW CASES WITH THE ILLUSTRIOUS U.S. SUPREME COURT. DeLONG VS. HENNESSEY, 912 F. 2D 1144;

B: THE 9th CIRCUIT ERRED, IT SHOULD NOT HAVE DENIED MY WRITS OF MANDAMUS WITHOUT REACHING THE MERITS OF THE MOTION TO PROCEED IN FORMA-PAUPERIS, AND THAT WHEN IT DID DECIDE THE FORMA-PAUPERIS ISSUE, MY POVERTY SHOULD NOT HAVE BEEN AN ISSUE IN AND OF ITSELF, IN SHORT, THE 9th CIRCUIT SHOULD HAVE DECIDED AND DENIED MY WRIT OF MANDAMUS "WITHOUT" REACHING THE "MERITS" OF THE MOTION TO PROCEED IN FORMA-PAUPERIS.

AND THE CLERK FOR THE 9th CIRCUIT SHOULD NOT HAVE BEEN DIRECTED TO "NOT" FILE OR ACCEPT ANY "FUTURE" PETITIONS FROM DEMOS IN FORMA-PAUPERIS. (AS THE FUTURE IS A LONG TIME, AND NO ONE CAN PROPHESY WHETHER OR NOT "ALL" OF DEMOS "FUTURE" PETITIONS, WILL IN FACT BE FRIVILOUS)

C: PAUPERS, ARE AND HAVE BEEN A VALUED PART OF THE U.S. SUPREME COURT DOCKET, GIDEON VS. WAINWRIGHT, 372 U.S. 335;

D: THE ORDER OF THE 9th CIRCUIT ENTERED ON 2/7/91 WAS NOT SIGNED, IN VIOLATION OF IN RE COVINGTON, D.C. WASH, 225 F. 444;

E: "INDIGENTS" HAVE A CONSTITUTIONAL RIGHT TO MAINTAIN "JUDICIAL" PROCEEDINGS WITHOUT PRE-PAYMENT OF COSTS OR FEE'S, 35 L. ED 2D 834;

F: THE 9th CIRCUIT IS TREATING ME DIFFERENTLY, THAN WHAT THE U.S. SUPREME COURT TREATED JESSE McDONALD, IN THE CASE OF IN RE: McDONALD, 103 L. ED 2D 158;

MR. McDONALD HAD HIS BAR ORDER APPLIED PROSPECTIVELY, YET, THE 9th CIRCUIT IS APPLYING IT'S BAR ORDER IN PETITIONER DEMOS' CASE RETROSPECTIVELY....

G: THE 9th CIRCUIT HAS NOT "PROVED" BY PERSUASIVE ARGUMENT, OR A PREPONDERANCE OF THE EVIDENCE, THAT JOHN ROBERT DEMOS JR POSES SUCH A "THREAT" TO THE ORDERLY ADMINISTRATION OF JUSTICE AS TO EMBARK UPON SUCH AN UNPRECEDENTED & DANGEROUS COURSE; AS THE "ORDER" OF THE 9th CIRCUIT IS ONE OF "QUESTIONABLE" LEGALITY, THE FEDERAL COURTS ARE AUTHORIZED PURSUANT TO 28 U.S.C. 1915 TO PERMIT IN-FORMA-PAUPERIS FILINGS...

H: 28 U.S.C. 1915 IS WRITTEN "PERMISSIVELY", BUT IT ESTABLISHES A COMPREHENSIVE SCHEME FOR THE ADMINISTRATION OF IN FORMA-PAUPERIS FILINGS. NOTHING IN 28 U.S.C. SUGGESTS THE 9th CIRCUIT HAS THE AUTHORITY TO ACCEPT IN-FORMA-PAUPERIS FILINGS FROM "SOME" LITIGANTS, BUT "NOT" FROM OTHERS ON THE BASIS OF HOW MANY TIMES THEY HAVE PREVIOUSLY SOUGHT OUR REVIEW. INDEED, IF ANYTHING, THE STATUTORY LANGUAGE FORECLOSES THE ACTION THE 9th CIRCUIT TOOK ON 2/7/91; SECTION 1915 (d) EXPLAINS THE CIRCUMSTANCES IN WHICH AN IN-FORMA-PAUPERIS PLEADING MAY BE DISMISSED AS FOLLOWS,"A COURT MAY DISMISS THE CASE IF THE ALLEGATION OF POVERTY IS UNTRUE, OR IF SATISFIED THAT THE ACTION IS FRIVILOUS OR MALICIOUS", THIS LANGUA (LANGUAGE) SUGGESTS AN INDIVIDUALIZED ASSESSMENT OF FRIVILOUSNESS OR MALICIOUSNESS THAT TH COURT'S PROSPECTIVE ORDER PRECLUDES....

AS STATED IN SILLS VS. BUREAU OF PRISONS, 761 F. 2D 792; " A COURT'S DISCRETION TO DISMISS IN FORMA-PAUPERIS CASES SUMMARILY IS "LIMITED"....IN EVERY CASE BY THE LANGUAGE OF THE STATUE ITSELF WHICH RESTRICTS IT'S APPLICATION TO COMPLAINTS FOUND TO BE FRIVILOUS, OR MALICIOUS. NEEDLESS TO SAY, "THE FUTURE" PETITIONS OR EXTRAORDINARY WRITS OF JOHN ROBERT DEMOS JR, HAVE NOT BEEN FOUND TO BE FRIVILOUS.

EVEN A VERY STRONG AND WELL FOUNDED BELIEF THAT DEMOS' "FUTURE" FILINGS WILL BE FRIVILOUS CANNOT RENDER A "BEFORE-THE FACT" DISPOSITION COMPATIBLE WITH THE "INDIVIDUALIZED" DETERMINATION 1915 (d) CONTEMPLATES.....

REASONS FOR GRANTING THE WRIT/PART. 111

RULE 46 OF THE U.S. SUPREME COURT GOVERNS CASES FILED IN FORMA-PAUPERIS. NO MORE THAN 28 U.S.C. 1915 DOES IT GRANT THE CIRCUIT COURT OR THE U.S. SUPREME COURT THE AUTHORITY TO DISQUALIFY A LITIGANT FROM "FUTURE" USE OF IN FORMA PAUPERIS STATUS. (DEMOS IS NOT SO MUCH IN ABHORRANCE OF THE 9th CIRCUIT ORDER DISMISSING HIS WRITS, AS HE IS IN SHOCK OVER THE FACT THAT THE ORDER APPLIES TO "FUTURE" WRITS THAT DEMOS MAY FILE, HOW CAN THE 9th CIRCUIT PREDICT IN ADVANCE THAT MY WRITS ARE FRIVILOUS BEFORE THEY ARE FILED, SHOULD NOT THE 9th CIRCUIT BE REQUIRED TO AT LEAST LOOK AT THEM "FUTURE" WRITS ON AN INDIVIDUALIZED BASIS???) INDEED, RULE 46.4 WOULD SEEM TO "FORBID" SUCH A PRACTICE, FOR IT SPECIFIES THAT WHEN THE FILING REQUIREMENTS DESCRIBED BY RULE 46 ARE COMPLIED WITH, THE CLERK "WILL FILE" THE LITIGANT'S PAPERS, "AND PLACE THE CASE ON THE DOCKET". TODAY. THE 9th CIRCUIT COURT OF APPEALS HAS "ORDERED" IT'S CLERS TO DO JUST THE OPPOSITE, AND THE U.S. SUPREME COURT HAS NOT "AMMENDED" IT'S COURT RULES. (9th CIRCUIT LAW CANNOT CONFLICT WITH U.S. SUPREME COURT RULES, AND LAW)... OF COURSE THE U.S. SUPREME COURT IS FREE TO AMEND IT'S RULES, SHOULD IT SEE THE NEED TO DO SO, BUT UNTIL IT DOES, THE 9th CIRCUIT IS BOUND BY THE RULES OF THE U.S. SUPREME COURT...

EVEN IF THE 9th CIRCUIT ORDER DENYING DEMOS THE RIGHT TO "EVER" FILE A WRIT INTO THEIR COURT WAS BEYOND DOUBT, THE 9th CIRCUIT'S ORDER WOULD STILL BE UNWISE, POTENTIALLY DANGEROUS, AND A DEPARTURE FROM THE TRADITIONAL PRINCIPLE THAT THE DOOR TO THE U.S. COURTHOUSE IS "OPEN TO ALL"...

THE 9th CIRCUIT'S ORDER PURPORTS TO BE MOTIVATED BY DEMOS' SISPROPORTIONATE CONSUMPTION OF THE COURT'S TIME AND RESOURCES. YET, IF HIS FILINGS ARE TRULY AS REPETITIOUS AS IT APPEARS, IT HARDLY TAKES MUCH TIME TO IDENTIFY THEM AS SUCH. INDEED, THE TIME THE 9th CIRCUIT UTILIZED IN DRAFTING IT'S ORDER OF FEBRUARY 7th, 1991 BARRING THE DOOR TO DEMOS, FAR EXCEEDS THAT WHICH WOULD HAVE BEEN NECESSARY TO PROCESS HIS PETITIONS FOR THE NEXT SEVERAL YEARS AT LEAST.

REASONS FOR GRANTING THE WRIT/PART. IV.

I CONTINUE TO FIND PUZZLING THE U.S. SUPREME COURT'S FERVOR IN ENSURING THAT RIGHTS GRANTED TO THE POOR ARE NOT ABUSED, EVEN WHEN SO DOING ACTUALLY INCREASES THE DRAIN ON THE COURTS "LIMITED" RESOURCES. BROWN VS. HERALD CO, 78 L. ED 2D 301;

TODAY'S 9th CIRCUIT ORDER MAKES SENSE AS AN EFFIC IENCY MEASURE ONLY IF IT IS MERELY A (THE) PRELUDE TO SIMILAR ORDERS IN REGARD TO OTHER LITIGANTS, OR PERHAPS TO A GENERALIZED RULE LIMITING THE NUMBER OF PETITIONS IN FORMA-PAUPERIS AN INDIVIDUAL MAY FILE. THEREIN LIES THE DANGER. I AM ALMOST CONCERNED, HOWEVER, THAT IF, AS I FEAR, THE 9th CIRCUIT CONTINUES ON THE COURSE IT NOW CHARTS TODAY, IT WILL END UP BY CLOSING IT'S DOOR TO A LITIGANT WITH A MERITORIOUS CLAIM. "IT IS RARE, BUT IT DOES HAPPEN ON OCCASSION, THAT THE U.S. SUPREME COURT WILL GRANT REVIEW, AND EVEN DECIDE IN FAVOR OF A LITIGANT WHO PREVIOUSLY HAD PRESENTED MULTIPLE UNSUCCESSFUL PETITIONS ON THE SAME ISSUE. CHESSMAN VS. TEETS, 1 L. ED 2D 1253;

THE 9th CIRCUIT ANNUALLY RECIEVES HUNDREDS OF PETITIONS, BUT MOST, NOT ALL OF THEM FILED IN FORMA-PAUPERIS, WHICH RAISE NO COLORABLE CLAIM (LEGAL CLAIM) WHATEVER, MUCH LESS A QUESTION WORTHY OF THE COURT'S REVIEW. MANY COME FROM INDIVIDUALS WHOSE MENTAL OR EMOTIONAL STABILITY APPEARS QUESTIONABLE. BUT IT DOES NOT TAKE THE 9th CIRCUIT LONG TO IDENTIFY THOSE TYPES OF PETITION S AS FRIVILOUS AND TO REJECT THEM. A CERTAIN EXPENDITURE IS REQUIRED, BUT IT IS NOT GREAT IN RELATION TO OUR WORK AS A WHOLE. TO RID ITSELF OF THIS ANNOYANCE, THE 9th CIRCUIT NOW NEEDLESSLY DEPARTS FROM IT;s GENEROUS TRADITION, AND IMPROVIDENTLY (IMPROVIDENTLY) SETS SAIL ON A JOURNEY WHOSE LANDING POINT IS UNCERTAIN. WE HAVE LONG BOASTED THAT THE 9th CIRCUITS DOORS IS OPEN TO ALL. WE CAN NO LONGER. NIETZKE VS. WILLIAMS, 104 L. ED 2D 338; (THE RULE 12 (b) (6) STANDARD FOR FAILURE TO STATE A CLAIM AND THE FRIVILOUSNESS STANDARD OF 1915 (d) SERVE DISTINCTIVE GOALS, AND TO CONFLATE THOSE STANDARDS WOULD "DENY" INDIGENTS PETITIONERS THE PRACTICAL PROTECTIONS AGAINST UNWARRANTED DISMISSAL GENERALLY ACCORDED PAYING PLAINTIFF'S UNDER RULE 12 (b) (6), AND FRUSTRATE CONGRESS' GOAL OF PUTTING INDIGENT PLAINTIFF'S/PETITIONER'S WHO OFTEN PROCEED IN FORMA-PAUPERIS (PRO-SE) AND THEREFORE MAY BE LESS CAPABLE OF FORMULATING LEGALLY COMPETENT INITIAL PLEADINGS ON A SIMILAR FOOTING WITH PAYING PETITIONER'S/PLAINTIFFS....

THE FEDERAL IN FORMA-PAUPERIS STATUTE WAS ENACTED IN 1892, ADKINS VS. E.I. DuPONT de NEMOURS & CO, 93 L. ED 43; "JUST BECAUSE DEMOS FAILED TO STATE A CLAIM DOES NOT MEAN HIS WRIT IS "FRIVILOUS", BROWER VS. INYO COUNTY, 103 L. ED 2D 628;

THE "BREVITY" OF 1915 (d) AND THE "GENERALITY" OF IT'S TERMS HAVE LEFT THE JUDICIARY WITH THE TASK (AND IT IS NOT INCONSIDERABLE) OF FASHIONING THE PROCEDURES BY WHICH THE STATUTE OPERATES AND OF GIVING CONTENT TO 1914 (d)'s INDEFINITE ADJECTIVES. (SEE CATZ & GUYER, FEDERAL IN FORMA PAUPERIS LITIGATION: IN SEARCH OF JUDICIAL STANDARDS, 31 RUTGERS L REV 655 (1978); FELDMAN, INDIGENTS IN THE FEDERAL COURTS: THE INFORMA-PAUPERIS STATUTE-EQUALITY AND FRIVILOUSNESS, 54 FORD L REV 413 (1985)...."ARTICULATING THE PROPER CONTOURS OF THE 1915 (d) TERM "FRIVILOUS" WHICH NEITHER THE STATUTE NOR THE ACCOMPANYING CONGRESSIONAL REPORTS DEFINES, PRESENTS ONE SUCH TASK, A MOST ARDUOUS TASK INDEED. ANDERS VS. CALIFORNIA, 18 L. ED 2D 493; WHERE THE FEDERAL APPELLATE COURTS DIVERGED OR HAVE DIVERGED, AND IT IS THE EXPRESS AND IMPLIED DUTY OF THE U.S. SUPREME COURT TO CORRECT THIS DIVERGENCE, IS THE MATTER OF THE QUESTION OF WHETHER A COMPLAINT WHICH FAILED OR FAILS TO STATE A CLAIM UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b) (6) AUTOMATICALLY SATISFIES THIS FRIVILOUSNESS STANDARD. THE COURT SHOULD NOTE THAT IT WAS THE GREAT WILLIAM H. REHNQUIST THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT THAT DISSENTED IN CRUZ VS. BETO, 31 L. ED 2D 625 263; (THE CHIEF JUDGES DISSENT MUST NOT BE TAKEN LIGHTLY) PURSUANT TO RULE 12 (b) (6) THE COMPLAINT "CANNOT" BE DISMISSED UNTIL AFTER THE RESPONDENTS HAVE RESPONDED; HOWEVER, UNDER 1915 (d) THE COURT CAN DISMISS THE MATTER SUMMARILLY WITHOUT REQUIRING A RESPONSE FROM THE DEFENDANTS OR THE RESPONDENTS, THUS, THERE IS A "CONFLICT" THAT THE COURT "MUST" RESOLVE.

(CONGRESS HAS BEEN VAGUE ON THIS ISSUE, AND THUS THE RULE OF LENITY SHOULD APPLY).

THE COURTS ARE NOT AT LIBERTY TO MAKE "POLICY", BUT RATHER TO "INTERPRET" STATUTE, IT IS CLEAR, AT LEAST IN THIS WRITER'S MIND, THAT THE 9th CIRCUIT ORDER/INJUNCTION BARRING DEMOS FROM "FILING" WRITS, IS CLEARLY AN ATTEMPT TO MAKE "POLICY". TAKING THIS APPROACH, IT IS EVIDENT THAT THE FAILURE TO STATE A CLAIM STANDARD OF RULE 12 (b) (6) AND THE FRIVILOUSNESS STANDARD OF 1915 (d) WERE DEVISED TO SERVE "DISTINCTIVE" GOALS, AND THAT WHILE THE "OVERLAP" BETWEEN THESE TWO STANDARDS IS CONSIDERABLE, IT DOES "NOT" FOLLOW THAT A COMPLAINT WHICH

FALLS AFOUL OF THE FORMER STANDARD WILL INVARIABLY FALL AFOUL OF THE LATTER". HOWEVER, DEMOS THE PETITIONER HEREIN STATES THAT THERE IS AN IRRECONCILABLE INCONSISTENCY BETWEEN THESE TWO STATUTES, AND THE COURT IS COMPELLED BY "DUTY" TO INTERVENE, AS THE JUDGES OF THE COURT HAVE TAKEN AN "OATH" TO FAITHFULLY UPHOLD, AND DEFEND THE UNITED STATES CONSTITUTION....

WHAT RULE 12 (b) (6) "DOES NOT" COUNTENANCE ARE "DISMISSALS" BASED ON JUDGES "DISBELIEF" OF A COMPLAINT'S FACTUAL (FACTUAL) ALLEGATIONS. HISHON VS. KING & SPALDING, 81 L. ED 2D 59; HOWEVER, 1915 (d) GRANTS JUDGES THE UNUSUAL POWER TO PIERCE THE VEIL OF THE COMPLAINTS FACTUAL ALLEGATIONS AND DISMISS THOSE CLAIMS WHOSE FACTUAL CONTENTIONS ARE CLEARLY BASELESS; WILLIAMS VS. GOLDSMITH, 701 F. 2D 603;

DEMOS CONTENDS THAT THE 9th CIRCUIT SHOULD HAVE DISMISSED HIS WRITS UNDER 12 (b) (6), AND "NOT" 1915 (d); THIS CONCLUSION FOLLOWS NATURALLY FROM 1915 (d)'s ROLE OF REPLICATING THE FUNCTION OF SCREENING OUT INARGUABLE CLAIMS WHICH IS PLAYED IN THE REALM OF PAID CASES BY FINANCIAL CONSIDERATIONS. THE COST OF BRINGING SUIT AND THE FEAR OF FINANCIAL SANCTIONS DOUBTLESS DETER MOST INARGUABLE PAID CLAIMS, BUT SUCH DETERRENCE PRESUMABLY SCREENS OUT "FAR LESS" FREQUENTLY THOSE ARGUABLY MERITORIOUS LEGAL THEORIES WHOSE ULTIMATE FAILURE IS NOT APPARENT AT THE OUTSET. (DEMOS CONTENDS JUST THE OPPOSITE, THAT FINANCIAL CONSIDERATIONS SCREEN OUT "FAR MORE" FREQUENTLY MERITORIOUS COMPLAINTS)...

CLEARLY THE ISSUES PRESENTED IN THIS MOTION FOR RE-CONSIDERATION INVOLVE CLOSE QUESTIONS OF FEDERAL LAW, AND THE U.S. SUPREME COURT HAS JURISDICTION, DUE TO SO THE SUBSTANTIAL NATURE OF THE ISSUES INVOLVED, TO GRANT CERTIORARI TO RESOLVE IT, ESTELLE VS. GAMBLE, 50 L. ED 2D 251;

REASONS FOR GRANTING THE WRIT/PART. V11.

McDONALD VS. SANTA FE TRAIL TRANSPORTATION CO, 49 L. ED 2D 493; BIVENS VS. SIX UNKNOWN FED. NARCOTICS AGENTS, 29 L. ED 2D 619; JONES VS. ALFRED MAYER CO, 20 L. ED 2D 1189; "IT CAN NEVER BE SAID THAT THE SUBSTANTIAL LEGAL CLAIMS RAISED IN THESE CASES CITED ABOVE WERE SO "DEFECTIVE" THAT THEY SHOULD NEVER HAVE BEEN BROUGHT AT THE OUTSET, TO TERM THESE CLAIMS "FRIVILOUS" IS TO "DISTORT" MEASUREABLY THE MEANING OF FRIVILOUSNESS BOTH IN COMMON AND LEGAL PARLANCE. "A FINDING OF A FAILURE TO STATE A CLAIM DOES "NOT" INVARIABLY MEAN THAT THE CLAIM IS WITHOUT MERIT, OR ARGUABLE MERIT"... "NOT ALL UNSUCCESSFUL CLAIMS ARE FRIVILOUS".. PENSON VS. OHIO, 102 L. ED 2D 300; BROWER VS. INYO COUNTY, 103 L. ED. 2D 628; THE UNITED STATES CONGRESS INTENDED THAT THE "IN-FORMA-PAUPERIS STATUTE" ASSURE EQUALITY OF CONSIDERATION FOR ALL LITIGANTS, WHETHER RICH OR POOR, COPPEDGE VS. U.S. 8 L. ED 2D 21; UNDER RULE 12 (b) (6) A PLAINTIFF WITH AN ARGUABLE CLAIM IS ORDANARILY ACCORDED "NOTICE" OF A PENDING MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND AN OPPORTUNITY TO AMMEND, BEFORE THE MOTION IS RULED UPON. SIMON VS. CRAFT, 45 L. ED 1165; THESE PROCEDURES "ALERT" THE PLAINTIFF/PETITIONER TO THE LEGAL THEORY UNDERLYING THE DEFENDANTS CHALLENGE, AND ENABLES HIM TO PROFFER A MEANINGFUL RESPONSE IN SELF-DEFENSE OF HIS PETITION; AND ALLOWS THE PLAINTIFF TO "CLARIFY" HIS ACTION/PETITION, THIS "ADVERSARIAL" PROCESS IS A FUNDAMENTAL PART OF THE U.S. CONSTITUTION, AND IT ALSO CRYSTALIZES THE PERTINENT ISSUES AND FACILITATES REVIEW, BRANDON VS. DISTRICT OF COLUMBIA BOARD OF PAROLE, 734 F. 2D 56; BY CONTRAST, AND IN CONFLICT WITH 12 (b) (6) STANDS 1915 (d); 1915 (d) "PERMITS" SUA SPONTE (SUA SPONTE) DISMISSALS, NECESSARY THOUGH THEY MAY BE SOMETIMES TO SHIELD DEFENDANTS FROM VEXATIOUS LAWSUITS, INVOLVE NO SUCH PROCEDURAL PROTECTIONS. THUS, THE BROAD DISCREPENCY, AND DISPARITY BETWEEN 28 U.S.C. 1915 (d); AND 28 U.S.C. 12 (b) (6) CREATES A VIOLATION OF THE 14th AMMENDMENT RIGHT TO EQUAL PROTECTION UNDER THE LAW, AND THE RIGHT TO DUE PROCESS, AS ONE STATUTE PROVIDES NOTICE AND THE RIGHT TO AMEND BEFORE DISMISSAL OF THE COMPLAINT, AND THE OTHER STATUTE DOES NOT ALLOW YOU A CHANCE TO CORRECT THE DEFICIENCY BEFORE SUA SPONTE DISMISSAL BY THE COURT PERIOD. (TRULY, THERE IS A "CONFLICT THAT BORDERS UPON AN IRRECONCILABLE INCONSISTENCY) .... INDIGENTS, DEMOS CONTENDS SHOULD BE AFFORDED THE SAME CONSTITUTIONAL PROTECTION, AS ARE AFFORDED THOSE LITIGANTS WHO ARE "ABLE" TO PAY COURT COSTS,

AND FILING FEE'S.... PAYING LITIGANTS ARE AFFORDED THE PROTECTIONS OF ADVERSARY PROCEEDINGS BEFORE THEIR COMPLAINTS/PETITIONS ARE DISMISSED, HOWEVER, ON THE OTHER SIDE OF THE FENCE, INDIGENTS ARE NOT AFFORDED "ADVERSARIAL" PROTECTIONS BEFORE THEIR CASES ARE DISMISSED. (WILL THE COURT CORRECT THAT DISPARITY (DISPARITY)????? THE 9th CIRCUIT COURT OF APPEALS ON FEBRUARY 7th, 1991 DISMISSED (7) OF PETITIONER DEMOS' EXTRAORDINARY WRITS, WITHOUT AFFORDING HIM AN "ADVERSARIAL" HEARING, OR CHANCE TO AMEND. AND ORDERED THAT THE CLERK OF THE 9th CIRCUIT WAS TO RETURN BACK TO DEMOS "UNFILED" ALL "FUTURE" WRITS FROM DEMOS, DEMOS CONTENDS THAT THE 9th CIRCUIT HAS NO WAY OF PREDICTING THE "FUTURE", AND WHAT AM I TO DO SHOULD I BY CHANCE HAVE A "MERITORIOUS" WRIT AMONG THE MANY THAT I MAY TRY TO "FILE" IN THE "FUTURE"??? YET, THE 9th CIRCUIT HAS STATED IN IT'S ORDER THAT "ALL" (FUTURE) PETITIONS WILL BE BARRED.

THE UNITED STATES "CONGRESS' INTENTION WAS TO PUT AND OR PLACE "INDIGENT PLAINTIFF'S" ON THE SAME FOOTING WITH "PAYING" PLAINTIFF'S, THUS, THE 9th CIRCUIT TODAY, RUNS AFOUL IN THIS WRITER'S OPINION OF "CONGRESSIONAL INTENT", AND HAS CONVERSELY, AND BY "IMPLICATION" DECLARED AN ACT OF CONGRESS TO BE "UNCONSTITUTIONAL"....

AFFORDING OPPORTUNITIES FOR RESPONSIVE PLEADINGS TO "INDIGENT" LITIGANTS COMMENSURATE TO THE "OPPORTUNITIES" ACCORDED SIMILARILY SITUATED PAYING PLAINTIFF'S IS ALL THE MORE IMPORTANT BECAUSE "INDIGENT" PLAINTIFF'S SO OFTEN PROCEED PRO-SE, AND THEREFORE MAY "BE LESS" CAPABLE OF FORMULATING LEGALLY COMPETENT INITIAL PLEADINGS.

HAINES VS. KERNER, 30 L. ED 2D 652;

A COMPLAINT/PETITION FILED IN FORMA PAUPERIS DEMOS CONTENDS IS "NOT" AUTOMATICALLY FRIVILOUS WITHIN THE MEANING OF 28 U.S.C. 1915 (d) BECAUSE IT FAILS TO STATE A CLAIM...

(V11). CONCLUSION OF THE WRI F CERTIORARI

DEMOS CONTENDS IN CONCLUSION THAT,

CONGRESS INTENDED THE INFORMA-PAUPERIS STATUTE TO APPLY TO ALL, WHETHER RICH OR POOR, COPPEDGE VS. U.S. 8 L. ED 2D 21; AND EX PARTE MILLIGAN, 4 WALLACE 2; "THE CONSTITUTION IS A LAW FOR RULERS, AND PEOPLE, AND COVERS ALL CLASSES OF MEN, AT ALL TIMES, AND UNDER ALL CIRCUMSTANCES"....

CLEARLY THERE ARE (COUNTERVAILING DISTINCTIONS BETWEEN 28 U.S.C. 1915 (d); AND 28 U.S.C. 12 (b) (6);)....

WILL THE U.S. SUPREME COURT DECIDE THE ISSUES IN THIS WRIT BY THE USE OF THE DOCTRINE OF INTERPOSITION, OR THE DOCTRINE OF INCIDENTAL AND DELEGATED AUTHORITY? OR WILL THE U.S. SUPREME COURT DECIDE THE ISSUES PRESENTED HEREIN BY INVOKING THE DOCTRINE OF STRICT CONSTRUCTIONISM, THE DOCTRINE OF ABSOLUTE POWERS, OR THE DOCTRINES OF IMPLIED — POWERS, & EXPRESS POWERS....

IT IS INTRESTING TO NOTE, THAT THE 9th CIRCUIT ORDER OF 2/7/91, THE ORDER WHICH IS THE SUBJECT OF THIS WRIT OF CERTIORARI DOES NOT CLEARLY DEFINE UNDER WHAT DOCTRINE IT HAS ISSUED IT'S ORDER, (THE ORDER IS SILENT, AND UNCONSTITUTIONALLY VAGUE ON THAT SCORE), DID THE 9th CIRCUIT UTILIZE THE DOCTRINE OF EXPRESS, IMPLIED, DELEGATED, CONSTRUCTIVE, INCIDENTIAL, STRICT CONSTRUCTIONISM, ABSOLUTISM, FEDERALISM, AND OR THE DOCTRINE OF INTERPOSITION??????

IT IS RARE, BUT IT DOES HAPPEN ON OCCASION, THAT THE U.S. SUPREME COURT "CHANGES" IT'S MIND AND DOES GRANT REVIEW, TO A LITIGANT THAT IT HAD IN THE PAST DENIED ON MANY, MANY OCCASSIONS, CHESSMAN VS. TEETS, 1 L. ED 2D 1253; (IF CHESSMAN VS. TEETS, SAYS ANYTHING TO US, IT IS THIS, "IT IS DANGEROUS, UNWISE, AND UNSOUND, TO PREDICATE AN ORDER ON WHAT A LITIGANT MAY "FILE" IN THE FUTURE, BECAUSE NO ONE CAN SAFELY PROGNOSE WHETHER OR NOT A LITIGANT WILL "NOT" HAVE (1) OR (2) MERITORIOUS CASES IN THE "FUTURE". THUS, WHENEVER THE 9th CIRCUIT GETS AWAY FROM IT'S CONSTITUTIONAL DUTY TO SCREEN ALL CASES ON AN INDIVIDUALIZED BASIS, WE HAVE A RATHER TENUOUS ARTICLE 111 CONFLICT/ISSUE...

WILL THE U.S. SUPREME COURT DECIDE THE ISSUES HEREIN BY INVOKING THE DOCTRINE OF "ENUMERATED AUTHORITY"???

WILL THE U.S. SUPREME COURT INQUIRE OF THE 9th CIRCUIT AS TO WHY IT DID NOT INVOKE THE DOCTRINE OF "ENUMERATED AUTHORITY", EITHER DIRECTLY, OR BY IMPLICATION???

WILL THE U.S. SUPREME COURT TAKE SUPERVISORY CONTROL OVER THE ISSUES ARTICULATED HEREIN, UNTIL THEY ARE FINALLY DISPOSED OF, AND ARTICULATED TO A FINAL ADJUDICATION, IN COMPORTMENT WITH DUE PROCESS AND EQUAL PROTECTION OF THE LAW????

CAN THE 9th CIRCUIT APPLY A CONSTITUTIONAL RULE, OR LAW, WITH AN "UNCONSTITUTIONAL" OBJECTIVE, GUTIERREZ VS. MUNICIPAL COURT OF THE SOUTHEAST JUDICIAL DISTRICT, 838 F. 2D 1031; HARRIS VS. FLEMING, 839 F. 2D 1232; ?????

CAN THE U.S. COURT OF APPEALS "EXPLOIT" MY POVERTY FACTOR, TO RID ME, OR DENY ME ACCESS, TO THEIR JUDICIAL FORUM, CAN THE 9th CIRCUIT MAKE MY POVERTY AN ALL-PERSUASIVE ISSUE, AN OVERLOOK THE INDIVIDUALIZED CAUSE PREDICATE OF EACH AND EVERY ONE OF MY WRITS ON A INDIVIDUAL BASIS??? U.S. VS. CARSON, 793 F. 2D 1141;

WILL THE U.S. SUPREME COURT INVOKE THE RULE OF LENITY HEREIN??? ROWE VS. LOCKHART, 736 F. 2D 457; AS THE INTENTIONS OF CONGRESS ARE NOT CLEAR, AND THE JUSTICES ON THE U.S. SUPREME COURT HAVE "ADMITTED" THE SAME.....?????

CAN THE 9th CIRCUIT NULLIFY AN ACT OF CONGRESS, WITHOUT HAVING "CLEAR", PRECISE, AND UNAMBIGUOUS DIRECTION??? SHIFRIN VS. WILSON, 412 F. SUPP. 1282;

ARE THE ARGUMENTS OF PETITIONER DEMOS COMPELLING ENOUGH TO WARRANT THE ATTENTION OF THE U.S. SUPREME COURT, COMMENSURATE WITH THE PUBLIC INTREST??? MARGARETS VS. EDWARDS, 488 F. SUPP. 181;

RUSSELL VS. WHEELER, 165 COLO. 296; TYSON VS. BANTON, 71 L. ED 718;

CHAS. WOLFF PACKING CO VS. COURT OF INDUSTRIAL RELATIONS OF STATE OF KANSAS, 67 L. ED 1103;

CONCLUSION OF WRIT OF CERTIORARI/PART. 111.

THE LAW HAS STATED OVER, AND OVER AGAIN, AND THE U.S. SUPREME COURT HAS BEEN THAT "VOICE", THAT PRISONERS HAVE A RIGHT TO PETITION THE GOVERNMENT, HOWEVER, JESSE McDONALD, IN THE CASE OF IN RE: McDONALD, 103 L. ED 2D 158; WAS "NOT" A PRISONER, HE WAS A "FREE-MAN", THUS WE HAVE A "FINE" DISTINCTION HERE, BOTH IN LAW, FACT, AND SIMILITUDE, BORDERING ON "SYLOGISTIC" IMPROPRIETY, AND DISPARITY, HUDSON VS. PALMER, 468 U.S. 517; "COURTS" MUST GRANT IN FORMA PAUPERIS STATUS, CARTER VS. U.S. 733 F. 2D 735;

CLEARLY, 28 U.S.C. 12 (B) (6) IS PROCEDURAL, WHEREIN 28 U.S.C. 1915 (d) IS SUBSTANTIAL, SUN OIL COMPANY VS. WORTMAN, 108 S, CT. 2117; CONGRESS IS UNCLEAR AS TO IT'S EXPRESS INTENTIONS ON THE IN FORMA-PAUPERIS STATUTE, SMITH VS. CITY OF PITTSBURGH, 764 F. 2D 188 183;

DEMOS CONTENDS THAT HE IS "POOR", THAT HE IS A WARD OF THE STATE, I HAVE NO MONEY, IN RE HUDSON, 13 WN. 2D 673;

THE CONSEQUENCES OF THE 9th CIRCUIT ORDER ARE FATAL IN SO FAR AS I AM CONCERNED, ZANDEE VS. COLISTO, 505 F. SUPP. 180;

I AM AN INMATE, BAUR VS. MATHEWS, 578 F. 2D 228;

UNLESS THE U.S. SUPREME (SUPREME) COURT INTERVENES, THE ERROR WILL BE OFT-REPEATED, AND WILL FRUSTRATE THE WORKINGS OF THE 14th AMMENDMENT, U.S. VS. DANIELS, 418 F. SUPP. 1074;

U.S. VS. CRUSO, 536 F. 2D 21;

TRULY, THE ISSUES AT STAKE ARE A PUZZLE WRAPPED IN A MYSTERY INSIDE OF AN ENIGMA, RBW, INC, VS. U.S. 632 F. SUPP. 13;

DEMOS CONTENDS THAT THE 9th CIRCUIT ORDER OF 2/7/91 PROHIBITING DEMOS FROM "EVER" FILING ANY WRITS INTO IT'S COURT PLACES AN INORDINATE AMMOUNT OF STRESS & DURESS UPON HIS SHOULDFERS (SHOULDERS), GARRITY VS. NEW JERSEY, 385 U.S. 493;

I ASK THAT THE U.S. SUPREME COURT INVOKE IT'S SUPERVISORY POWERS IN THIS MATTER, STACK VS. BOY BOYLE, 342 U.S. 1;

CONCLUSION O. WRIT OF CERTIORARI/PART IV.

TO QUOTE AN OLD "JEWISH" PROVERB, AND PHEGELLICISM, "I ASK THE COURT TO DECIDE THE ISSUES TODAY, WHILE THEY ARE RIPE FOR JUDICATION, AND DISPENSATION, THE COURT MAY REPLY, NOT YET MR. DEMOS, LET US ALLOW THIS WINE TO AGE A LITTLE MORE, AND I WOULD SAY IN REPLY, IF THE CASE IS NOT READY NOW, THEN WHEN? FOR JUSTICE DELAYED IS JUSTICE DENIED?????

ALL MEN ARE "EQUAL" BEFORE THE LAW, WHETHER YOU ARE "RICH", OR WHETHER YOU ARE "POOR", TRUAX VS. CORRIGAN, 66 L. ED 254;

MAY IT SO PLEASE THIS HONORED, ILLUSTRIOUS, AND VENERABLE U.S. SUPREME COURT TO GRANT THIS WRIT OF CERTIORARI, AND MAY (5) JUSTICES OF THE U.S. SUPREME COURT SO FIND FAVOR WITH IT'S CONTENTS, AND MAY THE COURT ORDER THE U.S. SOLICITOR GENERAL, AND THE STATE ATTORNEY GENERAL TO SUBMIT BRIEFS IN OPPOSITION, TO PREVENT A WORKING OF MANIFEST INJUSTICE.....

NLED DEMOS THE PETITIONER SAY MORE? NO, I THINK NOT.

WHEREFORE, PETITIONER DEMOS SAYETH NAUGHT...

/S/ John R. Demos

JOHN ROBERT DEMOS JR
1 PARK PLACE
P.O. BOX 777
MONROE, WASHINGTON.
(98272)

IN THE

UNITED STATES SUPREME COURT OF

WASHINGTON, D.C.

JOHN ROBERT DEMOS JR, (PETITIONER) VS. THE 9th CIRCUIT COURT OF APPEALS; (RESPONDENT)	U.S. SUPREME COURT NO. _____ 9th CIRCUIT CASE NO. 90-80100; 90-80318; 90-80337; 90-80343; 90-80322; 90-80323; & 90-80344; MOTION TO CERTIFY THE LOWER COURT RECORD PURSUANT TO RULE 19.1 OF THE U.S. SUPREME COURT, & RULE 43 OF THE U.S. SUPREME COURT; ALSO, 9th CIR COURT RULE 4 (A) (D) (E);

.....

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

COMES NOW THE PETITIONER, JOHN ROBERT DEMOS JR, AND MOVES THIS HON. COURT FOR A "MOTION TO CERTIFY THE LOWER COURT RECORD".

I BRING THIS MOTION IN GOOD FAITH, AND WITH CLEAN HANDS...

UNLESS, THE U.S. SUPREME COURT CERTIFIES THE RECORD, IT WILL NOT BE IN A POSITION TO LOOK AT THE WHOLE RECORD. I HAVE A PARTICULARIZED NEED IN HAVING THE U.S. SUPREME COURT REVIEW THE WHOLE COMPLETE FILE... GRIFFIN VS. ILLINOIS, 352 U.S. 12; STATE VS. WOODARD, 26 WN. APP. 735; U.S. VS. MacCOLLOM, 426 U.S. 317;

NEED I SAY MORE.???

/s/ John R. Demos

JOHN ROBERT DEMOS JR

IN THE

UNITED STATES SUPREME COURT

JOHN ROBERT DEMOS JR,	)
	)U.S. SUPREME COURT NO. _____
(PETITIONER)	)
	)U.S. C.O.A. CASE NO'S, 90-80100; 90-80318;
	)90-80337; 90-80343; 90-80322; 90-80323; & 90-80344;
	)
VS.	)
	)NOTE FOR MOTION DOCKET & CALENDAR
THE 9th CIRCUIT COURT OF APPEALS,	)
	)
	)FOR THE 3rd FRIDAY FOLLOWING THE NOTICE OF FILING
(RESPONDENT)	)
	) MARCH 8th, 1991;
	)

.....

TO: THE CLERK OF THE ABOVE ILLUSTRATED COURT;

HEAR YE, HEAR YE, HEAR YE;

COMES NOW THE PETITIONER, AND HE RESPECTFULLY, AND HUMBLY REQUESTS THAT THE U.S. SUPREME DEVOTE A FEW MINUTES OF IT'S BUSY TIME TO "DOCKET" AND "CALENDAR" PETITIONER DEMOS' MOTION TO CERTIFY THE LOWER COURT RECORD FOR THE 3rd FRIDAY FOLLOWING THE NOTICE OF FILING, OR AS SOON THEREAFTER AS THE SAME CAN BE HEARD....

I SUBMIT THIS NOTE FOR MOTION DOCKET IN GOOD FAITH, AND WITH JUST INTENT.....

/S/ John R. Demos

JOHN ROBERT DEMOS JR

Exhibit B

IN THE

9th CIRCUIT COURT OF APPEALS

JOHN ROBERT DEMOS JR,
(PETITIONER)

VS.

STATE SUPREME COURT, & THE STATE COURT OF APPEALS (REAL PARTY IN INTREST)

(RESPONDENTS)

U.S.C.A. CASE NO. _____

STATE SUPREME COURT CASE NO. _____

"PETITION FOR WRIT OF MANDAMUS"

28 U.S.C. 1361;

28 U.S.C. 1291-1294

.....

TO: THE CLERK OF THE ABOVE REFERENCED COURT:

COMES NOW THE PETITIONER, JOHN ROBERT DEMOS JR, WHO DEPOSES AND STATES, UNDER THE PAIN, AND PENALTY OF PERJURY THE FOLLOWING:

(1). STATEMENT OF THE CASE

ON JANUARY 8th, 1991, AND JANUARY 16th, 1991 THE STATE SUPREME COURT "DISMISSED" PETITIONER'S "MOTION FOR DISCRETIONARY REVIEW" WITHOUT CITING ANY CASE LAW IN SUPPORT OF IT'S DECISION, NOR, DID THE STATE SUPREME COURT "FILE" THE CASE, OR ASSIGN A CAUSE NUMBER AS IS THE NORMAL PRACTICE.

LASTLY, THE STATE SUPREME COURT FAILED TO RETURN MY PLEADINGS BACK TO ME AS I HAD REQUESTED, SO THAT I COULD "APPEAL" TO THE U.S. COURT OF APPEALS. (SEE EXHIBIT "B").

EXHIBIT "A" WILL SHOW THAT I AM TELLING THE TRUTH ABOUT THE STATE SUPREME COURT NOT CITING ANY CASE LAW IN IT'S ORDER, OR ISSUING A COURT CASE NUMBER TO THE CASE.

I FEEL THE ORDER OF THE STATE SUPREME COURT HAS UNDULY PREJUDICED MY RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

(11). ARGUMENT OF THE PETITIONER

TRULY THIS MATTER IS ONE OF EXCEPTIONAL CIRCUMSTANCES, AND THE 9th CIRCUIT "MUST" GRANT REVIEW, WEYGANDT VS. LOOK, 718 F. 2D:

BY VIRTUE OF THE STATE SUPREME COURT'S FAILURE TO "FILE" MY MOTION FOR DISCRETIONARY REVIEW, AND IT'S FAILURE TO CITE ANY CASE LAW, THE STATE SUPREME COURT "LOST" SUBJECT MATTER JURISDICTION, AND THUS, IT'S ORDER OF DISMISSAL WAS "INVALID", O'NEAL VS. U.S. 47 L. ED 945:

THE COURT IS REQUIRED TO "FILE" THE CASE, FILING OF A CASE IS NOT A DISCRETIONARY MATTER, FURINA VS. GRAYS HARBOR COUNTY, 158 WN. 619: U.S. VS. VAN DUZEE, 35 L. ED 399:

U.S. VS. JONES, 48 L. ED 776:

THE STATE SUPREME COURT FAILED TO FOLLOW THE LAW, AND COMMAND OF THE U.S. SUPREME COURT, AND DID NOT CITE ANY REASONS IN IT'S ORDER FOR IT'S DECISION, ONLY THE TERSE WORDS, "MOTION FOR DISCRETIONARY REVIEW DENIED". MICHIGAN VS. LONG, 77 L. ED 2D 1201:

CALIFORNIA VS. KRIVDA, 34 L. ED 2D 45: TEXAS VS. BROWN, 75 L. ED 2D 502:

SOUTH DAKOTA VS. NEVILLE, 74 L. ED 2D 748: LYNCH VS. NEW YORK, 79 L. ED 191:

HERB VS. PITCAIRN, 89 L. ED 789: MINNESOTA VS. NATIONAL TEA CO, 84 L. ED 920:

DIXON VS. DUFFY, 97 L. ED 153:

STATE COURTS MUST FOLLOW FEDERAL LAW, AARON VS. COOPER, 358 U.S. 1:

STATE COURTS MUST CONSTRUE STATUTES SO THAT THEY RETAIN THEIR CONSTITUTIONALITY, STATE VS. BROWET (BROWET), 103 WN. 2D 215; ONCE A LAW IS REPEALED BY IMPLICATION (RIGHT OF ACCESS TO THE COURTS, RIGHT TO APPEAL), THE 9th CIRCUIT HAS A DUTY TO INQUIRE, AND DO MORE, IT HAS A DUTY TO INTERVENE, ESTELLE VS. DORROUGH, 43 L. ED 2D: IT IS PETITIONER'S CONTENTION, THAT THE "ORDER" OS THE STATE SUPREME COURT IS INAPPROPRIATE, AND TAINTS OF IMPROPRIETY, INTERNATIONAL UNION UNITED AUTO VS. NATIONAL CAUCUS OF LABOR, 466 F. SUPP. 564:

BERNARD VS. GULF OIL, 619 F. 2D 459:

THERE CAN BE NO DOUBT THAT THE "ORDER" OF THE STATE SUPREME COURT IN QUESTION IS OUTRAGEOUS, AND INCONSISTENT WITH CONSTITUTIONAL DICTA, U.S. VS. WHITNEY, 602 F. SUPP.722:

SHAW VS. WINTERS, 796 F. 2D 1124:

ARGUMENT OF PETITIONER-PART. 11

THE STATE SUPREME COURT WILL PROBABLY TAKE THE POSITION THAT THEIR DECISION NOT TO FILE MY MOTION FOR DISCRETIONARY REVIEW WAS "NOT" BASED ON A LAW, BUT RATHER ON A RULE OF THE COURT, IN THAT CASE THEN, I INVOKE, MISTRETTA VS. U.S. 109 S. CT. 647; (ALL RULE MAKING IS NON-JUDICIAL). JUDGES ARE NOT AT LIBERTY TO STEP OUTSIDE OF THEIR "JUDICIAL FUNCTIONS". NOR CAN JUDGES EXCEED THEIR JURISDICTION, RANKIN VS. HOWARD, 633 F. 2D 844:

STATE LAW CANNOT REPEAL FEDERAL LAW BY IMPLICATION, NEW YORK VS. FERBER, 73 L. ED 2D 1113: CREOUF VS. LUIS, 803 F. 2D 92:

NOR CAN STATE LAW BE AT FATAL VARIANCE WITH FEDERAL LAW, WALKER VS. U.S. 116 F. 2D 458:

PETITIONER CONTENDS THAT THE STATE SUPREME COURT "ERRED" IN DISMISSING HIS PETITION/MOTION FOR DISCRETIONARY REVIEW, BECAUSE THE ISSUES THAT PETITIONER WANTED REVIEWED CONCERNED "CONFL (CONFLICTS OF LAW & CONSTITUTIONAL QUESTIONS). AMERICAN SUGAR REFINING COMPANY VS. NEW ORLEANS, 45 L. ED 859: HOLDER VS. AULTMAN, 42 L. ED 669; LOEB VS. COLUMBIA TOWNSHIP, 45 L. ED 280: MARBURY VS. MADISON, 1 CRANCH 137:

THE STATE SUPREME COURT HAS AN EXPRESS "DUTY" THAT MUST BE PERFORMED, AND OBEY,,WHENEVER A FEDERAL QUESTION IS PRESENTED TO IT, R.C.W. 7.36.140: AND PETITIONER MAINTAINS THAT HE HAD A SUBSTANTIAL ISSUE, U.S. VS. MESSERLIAN, 793 F. 2D 1 4;

THERE CAN BE NO OVERLOOKING THE FACT THAT PETITIONER DEMOS HAS BEEN PREJUDICED BY THE ACTION AND CONDUCT OF THE STATE COURTS, U.S. VS. POTAMITIS, 739 F. 2D 784:

STATE LAW "MUST" BE CONSISTENT WITH THE U.S. CON STITUTION, STONE VS. U.S. 42 L. ED 127:

PETITIONER DEMOS PRAYS THAT THE 9th CIRCUIT WILL APPOINT HIM COUNSEL IN THIS MATTER, AS THE ISSUES ARE TO GREAT FOR PETITIONER TO HANDLE ON HIS OWN. GORDON VS. LEEKE, 574 F. 2D 1147;

(111). MEMORANDA OF LAW IN SUPPORT

OHIO VS. JOHNSON, 468 U.S.:

COLORADO VS. NUNEZ, 465 U.S.:

OREGON VS. HAAS, 420 U.S. 714:

TOLEDO NEWSPAPER CO VS. U.S. 247 U.S. 402:

STACK VS. BOYLE, 342 U.S. 1:

CARBONELL VS. LOUISIANA, 772 F. 2D 185:

28 U.S.C. 2101 & 2107:

28 U.S.C. 2348;

FIELDER VS. BOSSHARD, 590 F. 2D 105:

(IV). CONCLUSION OF WRIT OF MANDAMUS

PETITIONER DEMOS AVERS IN CONCLUSION THAT,

HE FEELS THAT THE STATE SUPREME COURT HAS PREJUDICED HIS CONSTITUTIONAL RIGHTS,

AND HAVE PREVENTED HIM FROM APPEALING HIS CONSTITUTIONAL ISSUES TO THE 9th CIRCUIT,

B ECAUSE IT STANDS TO REASON THAT BEFORE I CAN PROFFER ANY TYPE OF AN APPEAL I MUST HAVE THE FULL COURT RECORDS.

THUS, I INVOKE 9th CIRCUIT COURT RULE #4-(A), (D), (E) =CERTIFICATION OF THE LOWER STATE COURT RECORD.

THE LAW IS CLEAR, THE STATE SUPREME COURT MUST CIRCULATE GOOD, AND FAIR LAW, AND IT MUST CITE REASONS FOR IT:S RULINGS, WHICH IS HAS FAILED TO DO ON NUMEROUS OCCASIONS.

I PRAY THAT NOT FOR LIGHT & TRANSIENT REASONS THE COURT WILL ISSUE THIS WRIT OF MANDAMUS.

/S/ John X. Demos

JOHN ROBERT DEMOS JR

IN THE

9th CIRCUIT COURT OF APPEALS

"REQUEST TO CLERK TO CERTIFY AND TRANSMIT THE RECORD"

TO: CLERK OF THE COURT
STATE SUPREME COURT
THE TEMPLE OF JUSTICE BUILDING
MAIL STOP: AV-11
OLYMPIA, WASHINGTON. (98504)

IN RE: STATE C.O.A. CASE NO's--27347-7-1:
27377-9-1; & 27350-7-1:
27270-5-1; 27328-1-1; & 27266-7-1:

PURSUANT TO RULE 19.1 OF THE RULES OF THE UNITED STATES SUPREME COURT, AND THE FEDERAL RULES OF APPELLATE, AND CIVIL PROCEDURE, YOU ARE REQUESTED TO CERTIFY AND TRANSMIT TO THE 9th CIRCUIT COURT OF APPEALS THE RECORDS IN THE ABOVE ENTITLED MATTER.

RESPECTFULLY SUBMITTED BY:

/S/ John R. Demos

JOHN ROBERT DEMOS JR
P.O. BOX 777
MONROE, WASHINGTON.
(98272)

JOHN ROBERT DEMOS JR.

(PETITIONER)

VS.

STATE SUPREME COURT,

(RESPONDENT)

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

THE PETITIONER, JOHN ROBERT DEMOS JR, ASKS LEAVE TO FILE THE ATTACHED PETITION FOR A WRIT OF CERTIORARI WITHOUT PRE-PAYMENT OF COSTS AND TO PROCEED IN FORMA-PAUPERIS.

PETITIONER HAS PREVIOUSLY BEEN GRANTED LEAVE TO SO PROCEED IN BOTH THE UNITED STATES DISTRICT COURT & THE U.S. COURT OF APPEALS FOR THE 9th CIRCUIT.

PETITIONER'S AFFADAVIT IN SUPPORT OF THIS MOTION IS ATTACHED HERETO.

/s/ John R. Demos

JOHN ROBERT DEMOS JR

9th CIRCUIT COURT OF APPEALS

AFFADAVIT IN SUPPORT O MOTION FOR LEAVE TO PROCEED FORMA-PAUPERIS

I, JOHN ROBERT DEMOS JR, BEING FIRST DULY SWORN, DEPOSE AND SAY THAT I AM THE PETITIONER IN THE ABOVE ENTITLED CASE, THAT IN SUPPORT OF MY MOTION FOR LEAVE TO PROCEED IN FORMA-PAUPERIS, I STATE THAT BECAUSE OF MY POVERTY I AM UNABLE TO PAY THE COSTS OF THIS CASE OR TO GIVE SECURITY THEREFOR: AND THAT I BELIEVE I AM ENTITLED TO REDRESS. I FURTHER SWEAR THAT THE RESPONSES WHICH I HAVE MADE TO THE QUESTIONS AND INSTRUCTIONS BELOW RELATING TO MY ABILITY TO PAY THE COST OF PROCEEDING IN THIS COURT ARE TRUE.

1. ARE YOU PRESENTLY EMPLOYED? NO.
2. HAVE YOU RECIEVED WITHIN THE PAST (12) MONTHS ANY INCOME FROM A BUSINESS, PROFESSION, OR OTHER FORM OF SELF-EMPLOYMENT, OR IN THE FORM OF RENT PAYMENTS, INTREST, DIVIDENDS, OR OTHER SOURCES? NO.
3. DO YOU OWN ANY REAL ESTATE OR CHECKING OR SAVINGS ACCOUNT? NO.
4. DO YOU OWN ANY PROPERTIES, STOCKS, BONDS, NOTES, AUTOMOBILES, OR OTHER VALUABLE PROPERTY (EXCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND CLOTHING)? NO.

LIST THE PERSONS WHO ARE DEPENDENT UPON YOU FOR SUPPORT AND STATE YOUR RELATIONSHIP TO THOSE PERSONS. (I HAVE NO DEPENDENTS).

I UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTION IN THIS AFFADAVIT WILL SUBJECT ME TO PENALTIES FOR PERJURY.

NOTARY PUBLIC Judy A Wick

DATED: THIS 18, DAY OF Jan, 1991

JUDY A. WICK NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 11-22-94

/s/ John Klemos

JOHN ROBERT DEMOS JR

IN THE 9th CIRCUIT COU OF APPEALS

AFFIDAVIT

OF

SERVICE BY MAILING

I, the undersigned, being first duly sworn, upon oath, do hereby depose and say;

That I am a citizen of the UNITED STATES, and competent to be a witness therein;

That on the 17th day of JANUARY 19~~90~~91, I deposited in the United States Mail, postage prepaid, addressed as follows; THE HON. C.J. MERRITT
CLERK OF THE STATE SUPREME COURT
THE TEMPLE OF JUSTICE BUILDING
MAIL STOP: AV-11
OLYMPIA, WASHINGTON. (98504)

Copies of the following documents;

(1) WRIT OF MANDAMUS:

(1) NOTICE OF APPEAL

State of Washington)
) ss
County of Snohomish)

John L. Demos

Sworn and Subscribed to. this 18 day of Jan 19 91

JUDY A. WICK
COMMISSION EXPIRES
NOTARY PUBLIC
11-22-94
STATE OF WASHINGTON

Judy A Wick

Notary Public, in and for the State of Washington, residing at Marysville

Exhibit A

THE SUPREME COURT

STATE OF WASHINGTON

C J MERRITT
CLERK

RONALD R CARPENTER
DEPUTY CLERK

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA WA 98504 0511

(206) 357 2077

January 8, 1991

Mr. John R. Demos, Jr.
#287455
P.O. Box 777
Monroe, Washington 98272

Re: Court of Appeals No. 27347-7-I, 27377-9-I & 27350-7-I - In re John R. Demos, Jr.

Dear Mr. Demos:

The following notation order was entered on January 8, 1991, by the Supreme Court Commissioner in the above entitled cause:

MOTION FOR DISCRETIONARY REVIEW:

"Denied."

/s/ Geoffrey Crooks,
Commissioner.

Sincerely.

RONALD R. CARPENTER
Supreme Court Deputy Clerk

BJH: crf

Exhibit BB

THE SUPREME COURT

STATE OF WASHINGTON

C.J. MERRITT
CLERK

RONALD R. CARPENTER
DEPUTY CLERK

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA, WA 98504-0511

(206) 357-2077

January 16, 1991

Mr. John R. Demos, Jr.
#287455
P.O. Box 777
Monroe, Washington 98272

Re: Court of Appeals No. 27270-5-I, 27328-1-I, 27266-7-I & 27305-1-I - In re the Personal Restraint Petition of John R. Demos, Jr.

Dear Mr. Demos:

The following notation order was entered on January 16, 1991, by the Supreme Court Commissioner in the above entitled cause:

MOTION FOR DISCRETIONARY REVIEW:

"Denied."

/s/ Geoffrey Crooks,
Commissioner.

Sincerely,

RONALD R. CARPENTER
Supreme Court Deputy Clerk

GC: crf

Exhibit B C

THE SUPREME COURT

STATE OF WASHINGTON

C J MERRITT
CLERK

RONALD R CARPENTER
DEPUTY CLERK

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA, WA 98504 0511

(206) 357 7077

January 4, 1991

Mr. John Robert Demos
P. O. Box 777
Monroe, Washington 98272

Re: Request for Documents

Dear Mr. Demos:

Your document entitled "Petition for Writ of Mandamus" was received on December 20, 1990. Your request is for copies of some paper work you have filed with this Court. Although some of your submissions have been returned to you in the past, the current policy is to file all documents submitted.

You are, of course, entitled to copies of documents you have filed. However, there is a charge of 30¢ per page. I am willing to waive the charge for the documents you request. However, they are not described well enough to know which documents you want amoung the many you have filed.

If you can provide the date of filing for the documents you want, they will be provided, if they are not too large. In the future, there will be a charge of 30¢ per page.

Sincerely,

C. J. MERRITT
Supreme Court Clerk

CJM: lb

Exhibit C

THE SUPREME COURT

STATE OF WASHINGTON

C.J. MERRITT
CLERK

RONALD R. CARPENTER
DEPUTY CLERK

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA, WA 98504-0511

(206) 357-2077

February 6, 1991

Mr. John R. Demos, Jr.
#287455
P.O. Box 777
Monroe, Washington 98272

Dear Mr. Demos:

The following notation order was entered on February 6, 1991, by the Supreme Court Commissioner in the above entitled cause:

PETITION FOR WRIT OF MANDAMUS:

"No action required of this Court."

/s/ Geoffrey Crooks,
Commissioner.

Sincerely,

RONALD R. CARPENTER
Supreme Court Deputy Clerk

GC: mja

THE SUPREME COURT

STATE OF WASHINGTON

C.J. MERRITT
CLERK

RONALD R. CARPENTER
DEPUTY CLERK

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA, WA 98504-0511

(206) 357-7077

February 6, 1991

Mr. John R. Demos, Jr.
#287455
P.O. Box 777
Monroe, Washington 98272

Re: Court of Appeals No. 27349-3-I

Dear Mr. Demos:

The following notation order was entered on February 6, 1991, by the Supreme Court Commissioner in the above entitled cause:

> NOTICE OF APPEAL PURSUANT TO 28 U.S.C. 2403 (A); R.C.W. 2.04.020; R.C.W. 7.36.140; & 7.36.040; 28 U.S.C. 1257; R.A.P. 13; & RABIN vs. COHEN, 570 F. 2d 864
>
> "No action required of this Court."
>
> /s/ Geoffrey Crooks,
> Commissioner.

Sincerely,

RONALD R. CARPENTER
Supreme Court Deputy Clerk

GC: mja

THE SUPREME COURT

STATE OF WASHINGTON

C J MERRITT
CLERK

RONALD R CARPENTER
DEPUTY CLERK

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA, WA 98504-0511

(206) 357-2077

February 6, 1991

Mr. John R. Demos, Jr.
#287455
P.O. Box 777
Monroe, Washington 98272

Re: Court of Appeals No. 27349-3-I

Dear Mr. Demos:

The following notation order was entered on February 6, 1991, by the Supreme Court Commissioner in the above entitled cause:

NOTICE OF APPEAL PURSUANT TO 28 U.S.C. 2403 (A); R.C.W. 2.04.020; R.C.W. 7.36.140; & 7.36.040; 28 U.S.C. 1257; R.A.P. 13; & RABIN vs. COHEN, 570 F. 2d 864

"No action required of this Court."

/s/ Geoffrey Crooks,
Commissioner.

Sincerely,

RONALD R. CARPENTER
Supreme Court Deputy Clerk

GC: mja

THE SUPREME COURT

C.J. MERRITT
CLERK

RONALD R. CARPENTER
DEPUTY CLERK

STATE OF WASHINGTON

TEMPLE OF JUSTICE
MAIL STOP AV 11
OLYMPIA, WA 98504-0511

(206) 357-2077

February 6, 1991

Mr. John R. Demos, Jr.
#287455
P.O. Box 777
Monroe, Washington 98272

Re: Court of Appeals Nos. 27347-7-I, 27377-9-I, 27350-7-I, 27270-5-I, 27328-1-I, 27266-7-I, 27305-1-I

Dear Mr. Demos:

The following notation order was entered on February 6, 1991, by the Supreme Court Commissioner in the above entitled cause:

MOTION TO CERTIFY THE RECORD - PURSUANT TO RAP 16:

"Denied."

/s/ Geoffrey Crooks,
Commissioner.

Sincerely,

RONALD R. CARPENTER
Supreme Court Deputy Clerk

GC: mja

Exhibit

IN THE

STATE SUPREME COURT OF WASHINGTON

AT OLYMPIA, WASHINGTON

JOHN ROBERT DEMOS JR,

(PETITIONER)

VS.

THE STATE SUPREME COURT, & THE STATE COURT OF APPEALS (REAL PARTY IN INTREST)

(RESPONDENTS)

) 9th CIR. CASE NO. _____

) STATE SUPREME COURT CASE NO. _____

) C.O.A. CASE NO. 27349-3-1

) "NOTICE OF APPEAL"

) PURSUANT TO 28 U.S.C. 2403 (A); R.C.W. 2.04.020; R.C.W. 7.36.140; & 7.36.040; 28 U.S.C. 1257; R.A.P. 13; & RABIN VS. COHEN, 570 F. 2D 864;

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

COMES NOW THE PETITIONER/AFFIANT, JOHN ROBERT DEMOS JR, WHO AVERS THE FOLLOWING UNDER THE PAIN, AND PENALTY OF PERJURY;

THAT I AM A UNITED STATES CITIZEN, AND AM COMPETENT TO BE A WITNESS HEREIN,

(1). REASONS WHY NOTICE SHOULD ISSUE:

A: THE STATE COURTS HAVE ERRED:

B: THE STATE COURTS HAVE BY IMPLICATION, REPEALED AN ACT OF CONGRESS, AND PUT A JEOPARDY A LAW RULING ENACTED BY THE UNITED STATES SUPREME COURT:

C: THE LOWER STATE COURTS ARE ARBITRARILY, ABROGATING JUDICIAL DUE PROCESS, AND EQUAL PROTECTION UNDER THE LAW, BY THEIR FAULTY DECISIONS, AND THEIR ABJECT FAILURE TO FOLLOW STARE-DECISIS, AND ORBITER DICTA...

D: THERE IS A "CONFLICT OF LAW" BEFORE THE COURT:

(11). STATEMENT OF THE CASE

ON JANUARY 22nd, 1991 THE STATE ♦ COURT OF APPEALS IN SEATTLE, WASHINGTON "DISMISSED" THE PERSONAL RESTRAINT PETITION OF JOHN ROBERT DEMOS JR IN C.O.A. CASE NO. 27349-3-1; ON THE PRETEXT THAT A PERSONAL RESTRAINT PETITION AFFORDS THE SAME IDENTICAL RELIEF AS THE ILLUSTRIOUS "WRIT OF HABEAS CORPUS"...

IT IS "LUDICROUS" FOR A COURT TO EVEN ASSUME THAT A PERSONAL RESTRAINT PETITION, AND THE GREAT WRIT OF HABEAS CORPUS CARRY THE SAME CLOUT, AND WEIGHT. THE GREAT WRIT IS MATCHLESS, IT IS UNEQUALLED, AND IS THE MOST MAGNANIMOUS DOCUMENT IN AMERICAN JURISPRUDENCE....

PETITIONER DEMOS CONTENDS THAT THE STATE COURT OF APPEALS ERRED IN IT'S REASONING FOR DISMISSING MY P.R.P. BECAUSE THE REASONING WAS "FALSE", AND WAS BUILT UPON, AND PREDICATED UPON A "ROPE OF SAND"....

PETITIONER DEMOS APPEALED THE VERDICT/JUDGEMENT OF THE STATE COURT OF APPEALS BY WAY OF A MOTION FOR DISCRETIONARY REVIEW, AND A WRIT OF MANDAMUS, THE STATE SUPREME COURT "DENIED" MY MOTION, AND MY WRIT OF MANDAMUS. (THE LOWER STATE COURTS HAVE REFUSED TO RETURN TO ME MY PLEADINGS, THUS, I AM UNABLE TO FORWARD UP TO THE COURT NOTHING BUT THE 'ORDERS' DENYING, AND DISMISSING MY CASES. (THE ENCLOSED EXHIBITS SHOW THAT THE STATE SUPREME COURT IS REFUSING TO FORWARD MY PLEADINGS BACK TO ME WHEN FINISHED)....

ON JANUARY 22nd 1991 I RECIEVED A RESPONSE BACK FROM THE WRIT OF MANDAMUS I HAD FILED TO THE STATE SUPREME COURT PROTESTING, AND CONTESTING THE SNOHOMISH COUNTY SUPERIOR COURT'S DECISION TO TRANSFER MY PLEADINGS UP TO THE STATE COURT OF APPEALS IN THE FORM OF A/@## PERSONAL RESTRAINT PETITION...

FIRST OF ALL THE GREAT WRIT IS SUPERIOR TO A PERSONAL RESTRAINT PETITION, THE GREAT WRIT AFFORDS WAY MORE CONSTITUTIONAL PROTECTIONS BY FAR, THAN DOES THE PERSONAL RESTRAINT PETITION, THE GREAT WRIT IS MENTIONED IN THE INTERNATIONAL LAW, THE U.S. CONSTITUTION, AND IN FOREIGN LAW, WHEREIN THE GRAFTED, STATE CREATED PERSONAL RESTRAINT PETITION IS NOTHING MORE THAN A "PRETENDER" TO THE THRONE OF JUSTICE, EQUALITY, AND FAIR-PLAY...

(111). MEMORANDA OF LAW IN SUPPORT

KIMBLE VS. D.J. McDUFFIE, 623 F. 2D 1060;

TOLEDO NEWSPAPER CO VS. U.S. 247 U.S. 402;

NEFF VS. GEORGE, 364 ILL. 306;

U.S. VS. BARKER, 514 F. 2D 227;

HAMILL VS. HAWKS, 508 F. 2D 41;

THE PIZARRO, 2 WHEAT 4 L. ED 226;

***U.S. VS. AMERICAN BREWING CO, 1 F. 2D 1001;

COFFIN VS. REICHARD, 143 F. 2D 443;

PRICE VS. JOHNSTON, 344 U.S. 266;

ARTICLE 1-SECTION 9 OF THE U.S. CONSTITUTION;

ANDERSON VS. HARLESS, 459 U.S. 4; *******

SANDOVAL VS. BROWN, 432 F. SUPP. 1028;

***IN RE BROWN, 35 WN. APP. 852;

EAKIN VS. RAUB, 12 SEARGANT & RAWLE (1825);

CHEVRON OIL COMPANY VS. HUDSON, 404 U.S. 97;

***GRAVEL VS. [redacted] U.S. 408 U.S. 606;

WATKINS VS. U.S. 354 U.S. 178;

ARTICLE 1-CLAUSE 12 OF THE WASHINGTON STATE CONSTITUTION;

AIR BASE HOUSING VS. SPOKANE COUNTY, 56 WN. 2D 642;

SMITH VS. DIGMOND, 434 U.S. 332;

DUGGER VS. ADAMS, 103 L. ED 2D 435;

MALENG VS. COOK, 104 L. ED 2D 435;

OLSON VS. HOWARD, 38 WN. 15;

HENSLEY VS. MUNICIPAL (MUNICIPAL) COURT, 411 U.S. 345;

CARAFAS VS. LaVALLEE, 391 U.S. 234;

STATE VS. MAJORS, 94 WN. 2D 354;

(1V). QUESTIONS OF LAW

1. CAN STATE COURTS "ABROGATE", AND "ANNUL" FEDERAL LAW???

2. CAN STATE COURTS TAKE AWAY BY IMPLICATION AN INMATE'S RIGHT TO THE GREAT WRIT OF HABEAS CORPUS, IN CONTRAVENTION TO, ARTICLE 1-CLAUSE 9 OF THE U.S. CONSTITUTION???

(V). QUESTIONS OF FACT

3. IS THE U.S. CONSTITUTION THE SUPREME LAW OF THE LAND???

4. CAN STATE COURTS DECLARE BY IMPLICATION THAT AN ACT OF THE U.S. SUPREME COURT, AND THE U.S. CONGRESS IS UNCONSTITUIONAL, OR SHOULD BE REPEALED????

5. CAN IN RE BROWN, 35 WN. APP. 852; "CONFLICT" WITH TOLIVER VS. OLSEN, 109 WN. 2D 607;????

(V1). CONCLUSION OF NOTICE OF APPEAL

PETITIONER---JOHN ROBERT DEMOS JR, CONTENDS THAT HIS EXHIBITS MARKED/DESIGNATED,

"A", "B", & "C" CLEARLY SHOW THAT BOTH THE STATE SUPREME COURT, AND THE STATE COURT OF APPEALS IS IN ERROR.

THE STATE SUPREME COURT "ERRED" IN DISALLOWING PETITIONER'S WRIT OF MANDAMUS, BECAUSE THERE WAS SUBSTANTIAL, AND COMPELLING ISSUES BEFORE THE COURT WARRANTING THE COURT'S DEPARTURE FROM IT'S DAY TO DAY MINUTE, AND THE USE OF IT'S EXTRAORDINARY POWERS.....

PETITIONER---JOHN ROBERT DEMOS JR, FURTHER CONTENDS THAT THE STATE SUPREME COURT ERRED IN NOT "FILING" PETITIONER'S PLEADINGS, AND IN NOT RETURNING BACK TO HIM "COPIES" OF HIS PLEADINGS, SO THAT HE COULD PROFFER AN APPEAL TO THE 9th CIRCUIT...

DEMOS CONTENDS THAT TOLIVERVS. OLSEN, 109 WN. 2D 607; CONFLICTS WITH ARTICLE 1-SECTION 9 OF THE UNITED STATES CONSTITUTION; AND WITH, FIELD VS. CLARK, 143 U.S. 649; BECAUSE THE JUDICIAL CANNOT PERFORM LEGISLATIVE FUNCTIONS, AND THE RULING IN DEMOS' CASE IS CLEARLY LEGISLATIVE, FOR IT CHANGES THE SCOPE, AND NATURE OF ARTICLE 1-CLAUSE 9 OF THE UNITED STATES CONSTITUTION, AS WELL AS CHANGES CRAWFORD VS. BELL, 599 F. 2D 890; IN RE BONNER, 151 U.S. 242; & WILWORDING VS. SWENSON, 404 U.S. 92;

WILL THE COURT RESOLVE THIS CONFLICT? AND EXERCISE SUPERVISORY CONTROL????

NEED PETITIONER SAY MORE? WHEREFORE PETITIONER DEMOS SAYETH NAUGHT....

/S/ John R. Demos

JOHN ROBERT DEMOS JR

Exhibit

IN THE

STATE SUPREME COURT OF WASHINGTON

AT OLYMPIA, WASHINGTON

JOHN ROBERT DEMOS JR, (PETITIONER) VS. THE STATE SUPREME COURT, & THE STATE COURT OF APPEALS, (REAL PARTY IN INTREST) (RESPONDENTS)	9th CIR. CASE NO. _____ STATE SUPREME COURT CASE NO. _____ C.O.A. CASE NO. 27349-3-1 "MOTION TO CERTIFY THE RECORD"—PURSUANT TO R.A.P. 16;

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

COMES NOW THE PETITIONER/AFFIANT, JOHN ROBERT DEMOS JR, WHO AVERS THE FOLLOWING UNDER THE PAIN, AND PENALTY OF PERJURY;

THAT I AM A U.S. CITIZEN, OF LEGAL AGE, AND COMPETENT TO BE A WITNESS HEREIN...

(1) REASONS WHY NOTICE SHOULD ISSUE

"THERE IS A CONSTITUTIONAL QUESTION THAT MUST BE DECIDED, BOTH AS TO LAW, AND AS TO FACT:

THE STATE COURTS HAVE BY "IMPLICATION" REPEALED AN ACT OF CONGRESS:

THERE IS A CONFLICT OF LAW BEFORE THE COURT:

THE LOWER STATE COURTS HAVE ABROGATED THE 14th AMMENDMENT BY IMPLICATION:

(11). MEMORANDA OF LAW IN SUPPORT

U.S. VS. HARRISON, 524 F. 2D 421;

SCHULTZ VS. ANDERSON, 191 WN. 326;

N.L.R.B. VS. SEARS ROEBUCK, 44 L. ED 2D 29;

28 U.S.C. 1254 (3);

HICKMAN VS. TAYLOR, 329 U.S. 495;

U.S. VS. WHEELER, 795 F. 2D 839;

MEMORANDA OF LAW/PART. 11

HELSTOSKI VS. MEANOR, 442 U.S. 500;

BROWN VS. BRIENEN, 722 F. 2D 360;

(111). CONCLUSION OF THE MOTION

PETITIONER, JOHN ROBERT DEMOS AVERS THAT, THE LOWER COURT RECORDS ARE OF PRIMARY AND CENTRAL IMPORTANCE IN THIS MATTER, AND THAT PETITONER DEMOS HAS A "APRTICULARIZED NEED" FOR THE SAME.

BEFORE THE 9th CIRCUIT CAN ADJUDICATE THE "APPEAL" ON IT'S MERITS, THE RECORDS WILL HAVE TO BE SUPPLIED TO THE COURT.

THUS, PETITIONER DEMOS REQUESTS THAT THE LOWER STATE COURTS SEND UP, PRONTO, AND WITH ALL DUE HASTE, THE RECORDS OF THE LOWER STATE COURTS IN THIS MATTER.

NEED I SAY MORE? WHEREFORE PETITIONER DEMOS SAYETH NAUGHT....

/s/ John R. Demos

JOHN ROBERT DEMOS JR

IN THE UNITED STATES SUPREME COURT

WASHINGTON, D.C.

90-7226

AFFIDAVIT

OF

SERVICE BY MAILING

I, the undersigned, being first duly sworn, upon oath, do hereby depose and say;

That I am a citizen of the UNITED STATES, and competent to be a witness therein;

That on the 6th day of MARCH 19 91, I deposited in the United States Mail, postage prepaid, addressed as follows;

THE HON. KENNETH STARR
UNITED STATES SOLICITOR GENERAL
THE UNITED STATES JUSTICE DEPARTMENT
10th & CONSTITUTION AVENUE N.W.
WASHINGTON, D.C.
(20530)

Copies of the following documents; (1) SET OF EXHIBITS---A MOTION FOR RE-CONSIDERATION, OR IN THE ALTERNATIVE A MOTION FOR DISCRETIONARY REVIEW"

THE EXHIBITS RELATE TO U.S. SUPREME COURT CASE NO. 90-7226;

John K. Klemyer

State of Washington)
) ss
County of Snohomish)

Sworn and Subscribed to. this 6 day of March 19 91

Judy A. Wick

Notary Public, in and for the State of Washington, residing at Monroe

JUDY A. WICK
COMMISSION EXPIRES
NOTARY
PUBLIC
11-22-94
STATE OF WASHINGTON

RECEIVED
MAR 11 1991
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE UNITED STATES
SUPREME COURT
CASE # 90-7226
CASE # 90-7225

AFFIDAVIT
OF
SERVICE BY MAILING

I, the undersigned, being first duly sworn, upon oath, do hereby depose and say;

That I am a citizen of the UNITED STATES, and competent to be a witness therein;

That on the 6TH day of FEBRUARY 1991, I deposited in the United States Mail, postage prepaid, addressed as follows; KENNETH STARR
U.S. SOLICITOR GENERAL
U.S. DEPARTMENT OF JUSTICE
10TH STREET & CONSTITUTION AVE N.W.
WASHINGTON, D.C.
20530

Copies of the following documents;

(1) WRIT OF HABEAS CORPUS DOCKETING & APPEARANCE FORM (1) WRIT OF CERTIORARI DOCKETING AND APPEARANCE FORM

John R. Klenger

State of Washington)
) ss
County of Snohomish)

Sworn and Subscribed to, this 6 day of March 19 91

Judy A Wick

Notary Public, in and for the State of Washington, residing at Marysville

JUDY A. WICK
COMMISSION EXPIRES
NOTARY PUBLIC
11-22-94
STATE OF WASHINGTON

IN THE

UNITED STATES COURT OF APPEALS IN

THE 9th CIRCUIT

JOHN ROBERT DEMOS JR,

(PETITIONER)

VS.

THE STATE COURT OF APPEALS, THE STATE SUPREME COURT, AND THE UNITED STATES DISTRICT COURT;

(RESPONDENTS)

U.S. C.O.A. CASE NO'S, #90-80100; 90-80318; 90-80322; 90-80323; 90-80337; 90-80343; & 90-80344;

"MOTION FOR RE-CONSIDERATION, OR IN THE ALTERNATIVE A MOTION FOR DISCRETIONARY REVIEW"

PURSUANT TO U.S. COURT OF APPEALS RULE # 27 & 6;

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

COMES NOW THE PETITIONER, JOHN ROBERT DEMOS JR, AND MOVES THIS HON. COURT FOR A "MOTION FOR DISCRETIONARY REVIEW", OR IN THE ALTERNATIVE A MOTION FOR RE-CONSIDERATION. PETITIONER JOHN ROBERT DEMOS JR, BRINGS THIS MOTION IN GOOD FAITH, AND WITH CLEAN HANDS. I AVER UNDER THE PAIN AND PENALTY OF PERJURY, THAT I AM A UNITED STATES CITIZEN, OF LEGAL AGE, SOUND MIND, AND AM COMPETENT TO BE A WITNESS HEREIN....

(1). STATEMENT OF THE CASE

ON FEBRUARY 7th, 1991 THE UNITED STATES COURT OF APPEALS ISSUED AN "EXTRAORDINARY ORDER" IN WHICH IT DOES DIRECT THE CLERK OF THE 9th CIRCUIT TO "RETURN" ANY PETITION OF DEMOS' WHICH SEEK EXTRAORDINARY RELIEF. (THE ORDER WAS UNSIGNED, AND ISSUED BY 9th CIRCUIT COURT JUDGES BROWNING, PREGERSON, AND NOONAN)...

DEMOS CONTENDS THAT THE "ORDER" OF THE 9th CIRCUIT VIOLATES ARTICLE 1-CLAUSE 9 OF THE UNITED STATES CONSTITUTION---(THE U.S. CONSTITUTION GIVES THE FEDERAL GOVERNMENT ONLY ONE SPECIFIC WAR TIME POWER, "THE ABILITY TO SUSPEND HABEAS CORPUS WRITS, WHICH IN EFFECT ALLOWS THE IMPRISONMENT OF CITIZENS WITHOUT CAUSE"....

(11). THE REASONS FOR REBUTTAL/AND RE-CONSIDERATION

A: THERE IS A "MAJOR" DIFFERENCE BETWEEN THE CASE OF JOHN ROBERT DEMOS JR, AND THE CASE OF IN RE: McDONALD, 103 L. ED 2D 158, WHICH THE 9th CIRCUIT CITES IN IT'S OPINION. FIRST OF ALL DEMOS IS STILL INCARCERATED, MR. JESSIE McDONALD WAS NOT INCARCERATED AT THE TIME THE U.S. SUPREME COURT ISSUED IT'S BAR ORDER..... DEMOS CONTENDS THAT SMITH VS. DIGMOND, 434 U.S. 332; DUGGER VS. ADAMS, 103 L. ED 2D 435; MALENG VS. COOK, 104 L. ED 2D 435; IN RE LOONEY, 134 U.S. 372; & IN RE BONNER, 151 U.S. 242 STATES THAT ONE "MUST" BE IN CUSTODY BEFORE HE CAN BE GRANTED A WRIT OF HABEAS CORPUS, DEMOS CONTENDS THAT WHEREIN MR. McDONALD FAILED TO MEET THE "IN CUSTODY REQUIREMENT", THAT HE DOES, THAT DEMOS IS IN FACT "IN CUSTODY". ALSO, MR. McDONALD'S CASE WAS CENTERED AROUND A "WRIT OF HABEAS CORPUS", WHEREIN MR. DEMOS' CASES ARE CENTERED AROUND A WRIT OF MANDAMUS..... THUS, THE 9th CIRCUIT FAILED TO SOLEMNIZE THE DISTINCTION BETWEEN A WRIT OF MANDAMUS, AND A WRIT OF HABEAS CORPUS. (I REPEAT THE U.S. SUPREME COURT ENTERED IT'S UNPRECEDENTED BAR ORDER AGAINST McDONALD IN A WRIT OF HABEAS CORPUS CASE, AND NOT A WRIT OF MANDAMUS CASE, AND JOHN DEMOS' CASE BEFORE THE 9th CIRCUIT CONCERNS A MANDAMUS, AND NOT A HABEAS CORPUS, (HABEAS & MANDAMUS ARE NOT THE SAME, THEY ARE OF THE SAME ROOT, BUT THE TASTE IS DIFFERENT).....

B: THE U.S. SUPREME COURT HAS "NEVER" DECLARED THAT "ALL" OF DEMOS' PLEADINGS WERE, AND ARE FRIVILOUS, AS WAS THE CASE WITH JESSIE McDONALD, IN 103 L. ED 2D 158; (SEE U.S. SUPREME COURT CASE NO. 90-6655).

C: DEMOS HAS NEVER IGNORED "THE LETTER & SPIRIT" OF RULE 26 OF THE U.S. SUPREME COURT, WHICH SPECIFIES PRE-REQUISITIES TO THE GRANTING OF EXTRAORDINARY WRITS, I HAVE NEVER BEEN WARNED, OR ADMONISHED BY THE U.S. SUPREME COURT (ONE) TIME, NO NOT EVER. DeLONG VS. HENNESSEY, 912 F. 2D 1144;

D: DEMOS CONTENDS THAT THE WRIT OF MANDAMUS SHOULD HAVE BEEN DENIED "WITHOUT" REACHING THE "MERITS" OF THE MOTION TO PROCEED IN FORMA PAUPERIS, AND THAT THE CLERK OF THE 9th CIRCUIT, SHOULD NOT HAVE BEEN DIRECTED TO "NOT" FILE OR ACCEPT ANY "FUTURE" PETITIONS

REASONS FOR REBUTTAL/PART. 11

FROM DEMOS IN FORMA-PAUPERIS. (THE FUTURE DENOTES A LONG TIME INDEED)...

E: THE "ORDER" OF THE 9th CIRCUIT WAS NOT SIGNED, AS IS REQUIRED BY, IN RE COVINGTON, D.C. WASH, 225 F. 444; IN RE MANCHESTER'S ESTATE, 174 CAL. 417;

F: "INDIGENTS" HAVE A CONSTITUTIONAL RIGHT TO MAINTAIN "JUDICIAL" PROCEEDINGS WITHOUT PRE-PAYMENT OF COSTS OR FEE'S. 35 L. ED 2D 834;

G: PAUPERS ARE, AND HAVE BEEN A VALUED PART OF THE COURT'S DOCKET, GIDEON VS. WAINWRIGHT, 372 U.S. 335;

H: THE 9th CIRCUIT FOR THE "FIRST" TIME IN IT'S ILLUSTRIOUS (100) YEAR HISTORY, HAS ISSUED AN ORDER, MAKING DEMOS A "TEST CASE", BY BARRING IT'S DOOR TO DEMOS "PROSPECTIVELY"... DEMOS CONTENDS THAT THE "INTENTION" OF THE U.S. SUPREME COURT WAS TO HAVE IN RE: McDONALD APPLIED PROSPECTIVELY, (ONLY TO MR. McDONALD), AND NOT RETROACTIVELY...

I: THE 9th CIRCUIT "HAS NOT" PROVED BY PERSUASIVE ARGUMENT, OR A PREPONDERANCE OF THE EVIDENCE, THAT JOHN ROBERT DEMOS JR POSES SHUCH A "THREAT" TO THE ORDERLY ADMINISTRATION OF JUSTICE AS TO EMBARK UPON SUCH AN UNPRECEDENTED & DANGEROUS COURSE; AS THE "ORDER" OF THE 9th CIRCUIT IS ONE OF "QUESTIONABLE" LEGALITY, THE FEDERAL COURTS ARE AUTHORIZED PURSUANT TO 28 U.S.C. 1915 TO PERMIT IN-FORMA PAUPERIS FILINGS.

J:28 U.S.C. 1915 IS WRITTEN "PERMISSIVELY", BUT IT ESTABLISHES A COMPREHENSIVE SCHEME FOR THE ADMINISTRATION OF IN FORMA PAUPERIS FILINGS. NOTHING IN 28 U.S.C. 1915 SUGGESTS THE 9th CIRCUIT HAS THE AUTHORITY TO ACCEPT IN FORMA PAUPERIS PLEADINGS FROM "SOME" LITIGANTS, BUT "NOT" FROM OTHERS ON THE BASIS OF HOW MANY TIMES THEY HAVE PREVIOUSLY SOUGHT OUR REVIEW. INDEED, IF ANYTHING, THE STATUTORY LANGUAGE FORECLOSES THE ACTION THE COURT TAKES TODAY. SECTION 1915 (d) EXPLAINS THE CIRCUMSTANCES IN WHICH AN IN FORMA PAUPERIS PLEADING MAY BE DISMISSED AS FOLLOWS:

REASONS FOR REBUTTAL/PART. 111

" A COURT MAY DISMISS THE CASE IF THE ALLEGATION OF POVERTY IS UNTRUE, OR IF SATISFIED THAT THE ACTION IS FRIVILOUS OR MALICIOUS", THIS LANGUAGE SUGGESTS AN INDIVIDUALIZED ASSESSMENT OF FRIVILOUSNESS OR MALICIOUSNESS THAT THE COURT'S PROSPECTIVE ORDER PRECLUDES.

AS STATED IN SILLS VS. BUREAU OF PRISONS, 761 F. 2D 792; "A COURT'S DISCRETION TO DISMISS IN FORMA-PAUPERIS CASES SUMMARILY "IS LIMITED...IN EVERY CASE BY THE LANGUAGE OF THE STATUTE ITSELF WHICH RESTRICTS IT'S APPLICATION TO COMPLAINTS FOUND TO BE FRIVILOUS OR MALICIOUS.. NEEDLESS TO SAY, "THE FUTURE" PETITIONS OR EXTRAORDINARY WRITS OF JOHN ROBERT DEMOS JR, HAVE NOT BEEN FOUND TO BE FRIVILOUS. EVEN A VERY STRONG AND WELL FOUNDED BELIEF THAT DEMOS' FUTURE FILINGS WILL BE FRIVILOUS CANNOT RENDER A BEFORE-THE-FACT DISPOSITION COMPATIBLE WITH THE INDIVIDUALIZED DETERMINATION 1915 CONTEMPLATES....

U.S. SUPREME COURT RULE #46 GOVERNS CASES FILED IN FORMA-PAUPERIS. NO MORE THAN 28 U.S.C. 1915 DOES IT GRANT THE CIRCUIT COURT OR THE U.S. SUPREME COURT THE AUTHORITY TO DISQUALIFY A LITIGANT FROM "FUTURE" USE OF IN FORMA PAUPERIS STATUS. INDEED, RULE 46.4 WOULD SEEM TO FORBID SUCH A PRACTICE, FOR IT SPECIFIES THAT WHEN THE FILING REQUIREMENTS DESCRIBED BY RULE 46 ARE COMPLIED WITH, THE CLERK "WILL FILE" THE LITIGANT'S PAPERS, "AND PLACE THE CASE ON THE DOCKET". TODAY, THE 9th CIRCUIT COURT OF APPEALS HAS ORDERED IT'S CLERKS TO DO JUST THE OPPOSITE. (9th CIRCUIT LAW CANN CANNOT CONFLICT WITH U.S. SUPREME COURT LAW).

OF COURSE THE U.S. SUPREME COURT IS FREE TO AMEND IT'S RULES, SHOULD IT SEE THE NEED TO DO SO, BUT UNTIL IT DOES, THE 9th CIRCUIT IS BOUND BY THE RULES OF THE U.S. SUPREME COURT.

EVEN IF THE LEGALITY OF THE 9th CIRCUIT'S ACTION REFUSING IN FORMA PAUPERIS STATUS WAS BEYOND (BEYOND) DOUBT, THE 9th CIRCUIT'S ORDER WOULD STILL BE UNWISE, POTENTIALLY DANGEROUS, AND A DEPARTURE FROM THE TRADITIONAL PRINCIPLE THAT THE DOOR TO THE U.S. COURTHOUSE IS OPEN TO ALL"....

THE 9th CIRCUIT'S ORDER PURPORTS TO BE MOTIVATED BY DEMOS' DISPROPORTIONATE CONSUMPTION OF THE COURT'S TIME AND RESOURCES. YET, IF HIS FILINGS ARE TRULY AS REPETITIOUS AS IT APPEARS, IT HARDLY TAKES MUCH TIME TO IDENTIFY THEM AS SUCH. INDEED, THE TIME THE 9th CIRCUIT UTILIZED IN DRAFTING IT'S ORDER OF FEBRUARY 7th, 1991 BARRING THE DOOR TO DEMOS, FAR EXCEEDS THAT WHICH WOULD HAVE BEEN NECESSARY TO PROCESS HIS PETITIONS FOR THE NEXT THE NEXT SEVERAL YEARS AT LEAST.

REASONS FOR REBUTTAL/ PART. 1V.

I CONTINUE TO FIND PUZZLING THE U.S. SUPREME'S COURTS FERVOR IN ENSURING THAT RIGHTS GRANTED TO THE POOR ARE NOT ABUSED, EVEN WHEN SO DOING ACTUALLY INCREASES THE DRAIN ON THE COURTS "LIMITED" RESOURCES. BROWN VS. HERALD CO, 78 L. ED 2D 301;

TODAY'S ORDER MAKES SENSE AS AN EFFICIENCY MEASURE ONLY IF IT IS MERELY THE PRECLUDE TO SIMILAR ORDERS IN REGARD TO OTHER LITIGANTS, OR PERHAPS TO A GENERALIZED RULE LIMITING THE NUMBER OF PETITIONS IN FORMA-PAUPERIS (PAUPERIS) AN INDIVIDUAL MAY FILE. THEREIN LIES THE DANGER.

I AM MOST CONCERNED, HOWEVER, THAT IF, AS I FEAR, THE 9th CIRCUIT CONTINUES ON THE COURSE IT NOW CHARTS TODAY, IT WILL END UP BY CLOSING IT'S (IT'S) DOORS TO A LITIGANT WITH A MERITORIOUS CLAIM. IT IS RARE, BUT IT DOES HAPPEN ON OCCASION THAT WE GRANT REVIEW AND EVEN DECIDE IN FAVOR OF A LITIGANT WHO PREVIOUSLY HAD PRESENTED MULTIPLE UNSUCCESSFUL PETITIONS ON (ON) THE SAME ISSUE. CHESSMAN VS. TEETS, 1 L. ED 2D 1253;

THE 9th CIRCUIT ANNUALLY RECIEVES HUNDREDS OF PETITIONS, BUT MOST, NOT ALL OF THEM FILED IN FORMA-PAUPERIS, WHICH RAISE NO COLORABLE CLAIM (LEGAL CLAIM) WHATEVER, MUCH LESS A QUESTIONS WORTHY OF THE COURT'S REVIEW. MANY COME FROM INDIVIDUAL'S WHOSE MENTAL OR EMOTIONAL STABILITY APPEARS QUESTIONABLE. IT DOES NOT TAKE (TAKE) THE 9th CIRCUIT LONG TO IDENTIFY THOSE TYPE OF PETITIONS AS FRIVILOUS AND TO REJECT THEM. A CERTAIN EXPENDITURE IS REQUIRED, BUT IT IS NOT GREAT IN RELATION TO OUR WORK AS A WHOLE. TO RID ITSELF OF THIS ANNOYANCE, THE 9th CIRCUIT NOW NEEDLESSLY DEPARTS FROM ITS GENEROUS TRADITION AND IMPROVIDENTLY SETS SAIL ON A JOURNEY WHOSE LANDING POINT IS UNCERTAIN. WE HAVE LONG BOASTED THAT THE 9th CIRCUITS DOOR IS OPEN TO ALL. WE CAN NO LONGER.NEITZKE VS. WILLIAMS, 104 L. ED 2D 338; (THE RULE 12 (b) (6) STANDARD FOR FAILURE TO STATE A CLAIM AND THE FRIVILOUSNESS STANDARD OF 1915 (d) SERVE DISTINCTIVE GOALS, AND TO CONFLATE THOSE STANDARDS WOULD DENY INDIGENTS PETITIONERS THE PRACTICAL PROTECTIONS AGAINST UNWARRANTED DISMISSAL GENERALLY ACCORDED PAYING PLAINTIFFS UNDER RULE 12 (b) (6), AND FRUSTRATE CONGRESSES GOAL OF PUTTING INDIGENT PLAINTIFF'S/PETITIONER'S WHO OFTEN PROCEED PRO-SE AND THEREFO (THEREFORE) MAY BE LESS CAPABLE OF FORMULATING LEGALLY COMPETENT INITIAL PLEADINGS ON A SIMILAR F (FOOTING) WITH PAYING PLAINTIFFS/PETITIONER'S.... THE FEDERAL IN FORMA PAUPERIS STATUTE WAS ENACTED IN 1892, ADKINS VS. E.I. DuPONT de NEMOURS & CO, 93 L. ED 43;"JUST BECAUSE DEMOS FAILED TO STATE A CLAIM DOES NOT MEAN HIS WRIT IS FRIVILOUS, BROWER VS, INYO COUNTY, 103 L. ED 2D 628;

REASONS FOR REBUTTAL/PART. V

K: THE BREVITY OF 1915 (d) AND THE GENERALITY OF ITS TERMS HAVE LEFT THE JUDICIARY WITH THE TASK (AND IT IS NOT INCONSIDERABLE) OF FASHIONING THE PROCEDURES BY WHICH THE STATUTE OPERATES AND OF GIVING CONTENT TO 1914 (d)'s INDEFINITE ADJECTIVES.(SEE CATZ & GUYER, FEDERAL IN FORMA PAUPERIS LITIGATION: IN SEARCH OF JUDICIAL STANDARDS, 31 RUTGERS L REV 655 (1978); FELDMAN, INDIGENTS IN THE FEDERAL COURTS: THE INFORMA PAUPERIS STATUTE-EQUALITY AND FRIVILOUSNESS, 54 FORD L REV 413 (1985)... "ARTICULATING THE PROPER CONTOURS OF THE 1915 (d) TERM "FRIVOLOUS" WHICH NEITHER THE STATUTE NOR THE ACCOMPANYING CONGRESSIONAL REPORTS DEFINES, PRESENTS ONE SUCH TASK, A MOST ARDUOUS TASK INDEED. ANDERS VS. CALIFORNIA, 18 L. ED 2D 493; WHERE THE FEDERAL APPELLATE COURTS HAVE DIVERGED, AND IT IS THE DUTY OF THE U.S. SUPREME COURT TO CORRECT THIS DIVERGENCE, IS THE MATTER OF THE QUESTION OF WHETHER A COMPLAINT WHICH FAILED OR FAILS TO STATE A CLAIM UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b) (6) AUTOMATICALLY SATISFIES THIS FRIVILOUSNESS STANDARD. THE COURT SHOULD NOTE THAT IT WAS THE GREAT WILLIAM H. REHNQUIST THE CHIEF JUSTICE THAT DISSENTED IN CRUZ VS. BETO, 31 L. ED 2D 263; (THE CHIEF JUDGES DISSENT MUST NOT BE TAKEN LIGHTLY). PURSUANT TO RULE 12 (b) (6) THE COMPLAINT "CANNOT" BE DISMISSED UNTIL AFTER THE RESPONDENTS HAVE RESPONDED; HOWEVER, UNDER 1915 (d) THE COURT CAN DISMISS THE MATTER SUMMARILLY WITHOUT REQUIRING A RESPONSE FROM THE RESPONDENTS OR DEFENDANTS, THUS, THERE IS A "CONFLICT" THAT THE COURT MUST RESOLVE: (CONGRESS HAS BEEN VAGUE ON THIS ISSUE, AND THUS THE RULE OF LENITY SHOULD APPLY).
THE COURTS ARE NOT AT LIBERTY TO MAKE "POLICY", BUT RATHER TO "INTERPRET" STATUTE, IT IS CLEAR, AT LEAST IN THIS WRITER'S MIND, THAT THE 9th CIRCUIT ORDER BARRING DEMOS FROM FILING WRITS, IS CLEARLY AN ATTEMPT TO MAKE POLICY... TAKING THIS APPROACH, IT IS EVIDENT THAT THE FAILURE TO STATE A CLAIM STANDARD OF RULE 12(b)(6) AND THE FRIVOLOUSNESS STANDARD OF 1915 (d) WERE DEVISED TO SERVE DISTINCTIVE GOALS, AND THAT WHILE "THE OVERLAP" BETWEEN THESE TWO STANDARDS IS CONSIDERABLE, IT DOES "NOT" FOLLOW THAT A COMPLAINT WHICH FALLS AFOUL OF THE FORMER STANDARD WILL INVARIABLY FALL AFOUL OF THE LATTER". HOWEVER, DEMOS THE PETITIONER HEREIN STATES THAT THERE IS AN IRRECONCILABLE INCONSISTENCY BETWEEN THE TWO STATUTES, AND THE COURT IS COMPELLED BY "DUTY" TO INTERVENE, AS THE JUDGES OF THE COURT HAVE TAKEN AN OATH TO FAITHFULLY UPHOLD, AND DEFEND THE UNITED STATES CONSTITUTION.

REASONS FOR REBUTTAL/PART. VI

WHAT RULE 12 (b) (6) "DOES NOT" COUNTENANCE ARE "DISMISSALS" BASED ON A JUDGES "DISBELIEF" OF A COMPLAINTS FACTUAL ALLEGATIONS. HISHON VS. KING & SPALDING, 81 L. ED 2D 59; HOWEVER, 1915 (d) GRANTS JUDGES THE UNUSUAL POWER TO PIERCE THE VEIL OF THE COMPLAINTS FACTUAL ALLEGATIONS AND DISMISS THOSE CLAIMS WHOSE FACTUAL CONTENTIONS ARE CLEARLY BASELESS; WILLIAMS VS. GOLDSMITH, 701 F. 2D 603;

DEMOS CONTENDS THAT THE 9th CIRCUIT SHOULD HAVE DISMISSED HIS WRITS UNDER 12(b)(6), AND "NOT 1915 (d); THIS CONCLUSION FOLLOWS NATURALLY FROM 1915 (d)'s ROLE OF REPLICATING THE FUNCTION OF SCREENING OUT INARGUABLE CLAIMS WHICH IS PLAYED IN THE REALM OF PAID CASES BY FINANCIAL CONSIDERATIONS.THE COST OF BRINGING SUIT AND THE FEAR OF FINANCIAL SANCTIONS DOUBTLESS DETER MOST INARGUABLE PAID CLAIMS, BUT SUCH DETERRENCE PRESUMABLY SCREENS OUT "FAR LESS" FREQUENTLY THOSE ARGUABLY MERITORIOUS LEGAL THEORIES WHOSE ULTIMATE FAILURE IS NOT APPARENT AT THE OUTSET. (DEMOS CONTENDS JUST THE OPPOSITE, THAT FINANCIAL CONSIDERATIONS SCREEN OUT "FAR MORE" FREQUENTLY MERITORIOUS COMPLAINTS)...

CLEARLY THE ISSUES PRESENTED IN THIS MOTION FOR RECONSIDERATION INVOLVE CLOSE QUESTIONS OF FEDERAL LAW, AND THE U.S. SUPREME COURT HAS JURISDICTION, DUE TO THE SUBSTANTIAL NATURE OF THE ISSUE INVOLVED, TO GRANT CERTIORARI TO RESOLVE IT, ESTELLE VS. GAMBLE, 50 L. ED 2D 251; McDONALD VS. SANTA FE TRAIL TRANSPORTATION CO, 49 L. ED 2D 493; BIVENS VS. SIX UNKNOWN FED. NARCOTICS AGENTS, 29 L. ED 2D 619; JONES VS. ALFRED MAYER CO, 20 L. ED 2D 1189;

"IT CAN NEVER BE SAID THAT THE SUBSTANTIAL LEGAL CLAIMS RAISED IN THESE CASES CITED ABOVE WERE SO "DEFECTIVE" THAT THEY SHOULD NEVER HAVE BEEN BROUGHT AT THE OUTSET, TO TERM THESE CLAIMS FRIVOLOUS IS TO DISTORT MEASURABLY THE MEANING OF FRIVOLOUSNESS BOTH IN COMMON AND LEGAL PARLANCE. "A FINDING OF A FAILURE TO STATE A CLAIM DOES "NOT" INVARIABLY MEAN THAT THE CLAIM IS WITHOUT ARGUABLE MERIT". "NOT ALL UNSUCCESSFUL CLAIMS ARE FRIVOLOUS"...

PENSON VS. OHIO, 102 L. ED 2D 300; BROWER VS. INYO COUNTY, 103 L. ED 2D 628;

THE UNITED STATES CONGRESS INTENDED THAT THE "IN-FORMA-PAUPERIS STATUTE" ASSURE EQUALITY OF CONSIDERATION FOR ALL LITIGANTS, WHETHER RICH OR POOR, COPPEDGE VS. U.S. 8 L. ED 2D 21;

REASONS FOR REBUTTAL/PART. V11.

UNDER RULE 12 (b) (6) A PLAINTIFF WITH AN ARGUABLE V CLAIM IS ORDINARILY ACCORDED "NOTICE" OF A PENDING MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND AN OPPORTUNITY TO AMEND, BEFORE THE MOTION IS RULED UPON.THESE PROCEDURES ALERT THE PLAINTIFF TO THE LEGAL THEORY UNDERLYING THE DEFENDANTS CHALLENGE, AND ENABLES HIM TO PROFFER A MEANINGFUL RESPONSE IN SELF-DEFENSE OF HIS PETITION; AND ALLOWS THE PLAINTIFF TO "CLAIRIFY" HIS ACTION/PETITION, THIS "ADVERSARIAL" PROCESS IS A FUNDAMENTAL PART OF THE U.S. CONSTITUTION, AND IT ALSO CRYSTALIZES THE PERTINENT ISSUES, AND FACILITATES REVIEW, BRANDON VS. DISTRICT OF COLUMBIA BOARD OF PAROLE, 734 F. 2D 56; BY CONTRAST, AND IN CONFLICT WITH 12 (b)(6) STANDS 1915 (d); 1915 (d) "PERMITS" SUA SPONTE DISMISSALS, NECESSARY THOUGH THEY MAY BE SOMETIMES TO SHIELD DEFENDANTS FROM VEXATIOUS LAWSUITS, INVOLVE NO SUCH PROCEDURAL PROTECTIONS. THUS, THE BROAD DISCREPENCY, AND DISPARITY BETWEEN 28 U.S.C. 1915 (d); AND 28 U.S.C. 12 (b) (6) CREATES A VIOLATION OF THE 14th AMMENDMENT RIGHT TO EQUAL PROTECTION UNDER THE LAW, AND THE RIGHT TO DUE PROCESS, AS ONE STATUTE PROVIDES NOTICE AND THE RIGHT TO AMEND BEFORE DISMISSAL OF THE COMPLAINT, AND THE OTHER STATUTE DOES NOT ALLOW YOU A CHANCE TO CORRECT THE DEFICIENCY BEFORE SUA SPONTE DISMISSAL BY THE COURT. (TRULY, THERE IS A CONFLICT THAT BORDERS UPON A IRRECONCILABLE INCONSISTENCY)...

INDIGENTS, DEMOS CONTENDS SHOULD BE AFFORDED THE SAME CONSTITUTIONAL PROTECTIONS, AS ARE AFFORDED THOSE LITIGANTS WHO ARE ABLE TO PAY COURT COSTS, AND FILING FEE'S... PAYING LITIGANTS ARE AFFORDED THE PROTECTIONS OF ADVERSARY PROCEEDINGS BEFORE THEIR COMPLAINTS/PETITIONS ARE DISMISSED, HOWEVER, ON THE OTHER SIDE OF THE FENCE, INDIGENTS ARE NOT AFFORDED "ADVERSARIAL" PROTECTIONS BEFORE THEIR CASES ARE DISMISSED. (WILL THE COURT CORRECT THAT DISPARITY?)

THE 9th CIRCUIT COURT OF APPEALS ON FEBRUARY 7th, 1991 DISMISSED (7) OF PETITIONER DEMOS' EXTRAORDINARY WRITS, WITHOUT AFFORDING HIM AN "ADVERSARIAL" HEARING, OR CHANCE TO AMEND. AND ORDERED THAT THE CLERK OF THE 9th CIRCUIT WAS TO RETURN BACK TO DEMOS "UNFILED" ALL FUTURE WRITS FROM DEMOS, DEMOS CONTENDS THAT THE 9th CIRCUIT HAS NO WAY OF PREDICTING THE "FUTURE", AND WHAT AM I TO DO SHOULD (SHOULD) I BY CHANCE HAVE A MERITORIOUS WRIT AMONG THE MANY THAT I MAY TRY TO "FILE" IN THE FUTURE? YET, THE 9th CIRCUIT HAS STATED IN IT'S ORDER THAT ALL "FUTURE" PETITIONS WILL BE BARRED. (V111).

L: THE UNITED STATES CONGRESS' INTENTION WAS TO PUT AND OR PLACE INDIGENT PLAINTIFF'S ON THE SAME FOOTING WITH PAYING PLAINTIFF'S, THUS, THE 9th CIRCUIT TODAY RUNS AFOUL IN THIS WRITER'S OPINION OF CONGRESSIONAL INTENT, AND HAS CONVERSELY, AND BY IMPLICATION, DECLARED AN ACT OF CONGRESS TO BE "UNCONSTITUTIONAL"...

AFFORDING OPPORTUNITIES FOR RESPONSIVE PLEADINGS TO "INDIGENT" LITIGANTS COMMENSURATE TO THE OPPORTUNITIES ACCORDED SIMILARLY SITUATED PAYING PLAINTIFF'S IS ALL THE MORE IMPORTANT BECAUSE INDIGENT PLAINTIFF'S SO OFTEN PROCEED PRO-SE, AND THEREFORE MAY "BE LESS" CAPABLE OF FORMULATING LEGALLY COMPETENT INITIAL PLEADINGS. HAINES VS. KERNER, 30 L. ED 2D 652;

A COMPLAINT/PETITION FILED IN FORMA PAUPERIS DEMOS CONTENDS IS "NOT" AUTOMATICALLY FRIVILOUS WITHIN THE MEANING OF 28 U.S.C. 1915 (d) BECAUSE IT FAILS TO STATE A CLAIM.

(111). MEMORANDA OF LAW IN SUPPORT

KIMBLE VS. D.J. McDUFFIE, 623 F. 2D 1060;

ROBERTS VS. CONTINENTAL INS. CO, 770 F. 2D 853;

DAVIDSON VS. NEW ORLEANS, 24 L. ED 616;

BAREFOOT VS. U.S. 463 U.S. 893;

SHIFRIN VS. WILSON, 412 F. SUPP. 1282;

SMITH VS. BENNETT, 365 U.S. 708;

ARTICLE 1V OF THE U.S. CONSTITUTION;

ROWE VS. LOCKHART, 736 F. 2D 457;

CONSOLIDATED RAIL CO VS. I.C.C. 590 F. 2D 937;

REPORTER'S COMM FOR FREEDOM OF THE PRESS VS. A'ERICAN TEL & TEL CO, 593 F. 2D 1030;

U.S. VS. IRWIN, 561 F. 2D 198;

STONE VS. POWELL, 428 U.S. 465;

HARMON VS. McNUTT, 91 WN. 2D 126;

ADDLEMAN VS. BOARD, 107 WN. 2D 503;

THOMAS VS. PATE, 493 F. 2D 151;

MARTIN VS. WAINWRIGHT, 525 F. 2D 983;

BATTLE VS. ANDERSON, 376 F. SUPP. 402;

SLAUGHTERHOUSE CASES, 16 WALLACE 36;

SAWYER VS. U.S. 465 F. SUPP. 282;

BASIARDANES VS. CITY OF GALVESTON, 682 F. 2D 1203;

ELKINS VS. U.S. 364 U.S. 206;

ALLIED BANK INTERN VS. BANCO CREDITO AGRICOLA, 757 F. 2D 516;

ENGEL VS. U.S. 448 F. SUPP. 201;

JONES VS. CUNNINGHAM, 371 U.S. 236;

U.S. VS. PELTIER, 422 U.S. 531;

COHENS VS. VIRGINIA, 5 L. ED 257;

***U.S. VS. WURZBACH, 280 U.S. 396;

MEMORANDA OF LAW/PART 11

ROBERTS VS. ACRES, 495 F. 2D 57;

***LINK VS. WABASH RAILROAD CO, 370 U.S. 626;

WEEKS VS. U.S. 232 U.S. 383;

BARBER VS. PAGE, 390 U.S. 719;

ROCHIN VS. CALIFORNIA, 342 U.S. 165;

PIKOFSKY VS. JEM OIL CO, 607 F. SUPP. 727;

SCREWS VS. U.S. 325 U.S. 91;

MOSS VS. MOSS, 163 WN. 444;

EX PARTE MILLIGAN, 4 WALLACE 2.

U.S. VS. PETERS, 5 CRANCH 115;

SOVEREIGN CAMP W.O.W. VS. CASODOS, 21 F. SUPP. 989;

WOODHAM VS. AMERICAN CYSTOSCOPE COMPANY, 335 F. 2D 551;

STANDARD OIL VS. JOHNSON, 86 L. ED 1611;

AVLONTIS VS. SEATTLE DISTRICT COURT, 97 WN. 2D 131;

IN RE EVICH, 50 WN. APP. 84;

M'CULLOCK VS. MARYLAND, 4 L. ED 579;

STATE VS. KELLER, 98 WN. 2D 725;

**FERGUSON VS. SKRUPA, 372 U.S. 726;

WILVEY VS. U.S. 7 CT. CL. 305;

***HENDERSON VS. MORGAN, 426 U.S. 637;

***CANCINO VS. CRAVEN, 467 F. 2D 1243;

***WHITNEY VS. BUCKNER, 107 WN. 2D 861;

RIZZO VS. GOODE, 423 U.S. 362;

JOHNSON VS. GLICK, 481 F. 2D 1028;

MOORE VS. CITY OF EAST CLEVELAND, 431 U.S. 494;

***MISSOURI VS. HOLLAND, 252 U.S. 416;

DAVIS VS. ALASKS, 415 U.S. 308;

***SHAPIRO VS. THOMPSON, 394 U.S. 618;

BOAG VS. BOIES, 455 F. 2D 467;

DOWD VS. U.S. 95 L. ED;

WINDSOR VS. McVEIGH, 93 U.S. 274;

OUTAGAMIE COUNTY VS. C.A.B. 355 F. 2D 900;

BLOCK VS. RUTHERFORD, 468 U.S. 576;

BOAG VS. MacDOUGALL, 454 U.S. 364;

FAULKNER HOSP CORP VS. SCHWEIKER, 537 F. SUPP. 1058;

N.Y. EYE & EAR INFIRMARY VS. HECKLER, 594 F. SUPP. 396;

U.S. VS. HEARST, 638 F. 2D 1194;

LAING VS. U.S. 46 L. ED 2D 416;

BAUMAN VS. U.S.D.C. 557 F. 2D 650;

EX PARTE FAHEY, 91 L. ED 2041;

U.S. VS. BARKER, 514 F. 2D 227;

HAMILL VS. HAWKS, 58 F. 2D 41;

THE PIZARRO, 2 WHEAT, 4 L. ED 226;

SEATTLE VS. RICE, 93 WN. 2D 728;

ARGERSINGER VS. HAMLIN, 407 U.S. 25;

***U.S. VS. AMERICAN BREWING CO, 1 F. 2D 1001;

***WINTERS VS. N.Y. 333 U.S. 507;

U.S. VS. CALLANAN, 173 F. SUPP. 98;

DAVENPORT VS. STATE, 543 P. 2D 1204;

ATTORNEY GENERAL VS. ELECTRIC STORAGE BATTERY CO, 188 MASS. 239; *********

KNIGHT VS. U.S. 310 F. 2D 305;

WATT VS. STARKE, 101 U.S. 252;

MASON VS. CRANOR, 227 F. 2D 557;

HURN VS. RETIREMENT FUND TRUST OF PLUMBING, 648 F. 2D 1252;

GARRITY VS. NEW JERSEY, 385 U.S. 493;

****CHESSMAN VS. TEETS, 1 L. ED 2D 1253;

LAKE CARRIERS ASS'N VS. MacMULLAN, 32 L. ED 2D 257;

***COPPEDGE VS. U.S. 8 L. ED 2D 21;

HR REP. NO. 1079 52d CONG, ist SESS, 1 (1892);

McMAHON VS. U.S. 186 F. 2D 227;

U.S. VS. MADDEN, 352 F. 2D 792;

STEVENS VS. MARKS, 383 U.S. 243;

JORDAN VS. LOS ANGELES COUNTY, 669 F. 2D 1311;

WILLIAMS VS. VINCENT, 508 F. 2D 541;

DENT VS. WEST VIRGINIA, 129 U.S. 114;

OREGON VS. HAAS, 420 U.S. 714;

HECKLER VS. EDWARDS, 466 U.S.;

U.S. VS. BONIFACE, 601 F. 2D 390;

DOESCHER VS. ESTELLE, 616 F. 2d 205;

MARBURY VS. MADISON, 2 L. ED 60;

***SCHENCK VS. U.S. 249 U.S. 47;

ABRAMS VS. U.S. 250 U.S. 616;

WITTERS VS. U.S. 70 U.S. APP. D.C. 316;

THORNHILL VS. ALABAMA 310 U.S. 88;

***STATE OF ALASKA VS. U.S. 563 F. SUPP. 1223;

TARLTON VS. CLARK, 441 F. 2D 384;

MACKEY VS MONTRYM, 443 U.S. 1;

WALKER VS. HUGHES, 558 F. 2D 1247;

MEACHUM VS. FANO, 427 U.S. 215;

POTTER VS. McCALL, 433 F. 2D 1087;

SHEPHERD VS. FLORIDA, 95 L. ED!

****MERCHANTS NATIONAL BANK VS. DREDGE GENERAL, 663 F. 2D 1338;

****SIMON VS. CRAFT, 45 L. ED 1165;

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GREENE VS. CITY OF MEMPHIS, 610 F. 2D 395;

GUERNSEY VS. RICH PLAN OF MIDWEST, 408 F. SUPP. 582;

***EBERLY VS. MOORE, 16 L. ED 612;

EATON VS. TULSA, 39 L. ED 2D 693;

KATZ VS. U.S. 389 U.S. 347;

U.S. VS. BROWN, 673 F. 2D 278;

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McMURTRY VS. U.S. 88 L. ED 1075;

IN RE McSHANES PETITION, 235 F. SUPP. 262;

MICHELIN TIRE CORP VS. WAGES, 46 L. ED 2D 495;

CHAPMAN VS. HOUSTON WELFARE RIGHTS ORGANIZATION, 60 L. ED 2D 508;

****CALIFORNIA EX REL. STATE LANDS COMM VS. U.S. 73 L. ED 2D 1;

FOX VS. OHIO, 12 L. ED 213;

SCOLA VS. BOAT FRANCES, 618 F. 2D 147;

***FLORASYNTH INC VS. PICKHOLZ, 750 F. 2D 171;

U.S. VS. JOHNSON, 752 F. 2D 206;

U.S. VS. JONES, 48 L. ED 776; U.S. VS. VANDUZEE, 35 L. ED 399;**********

GARLAND VS. STATE OF WASHINGTON, 58 L. ED 772;

TATUM VS. U.S. 275 F. 2D 894;

***LANE VS. BROWN, 372 U.S. 477;

BURNS VS. OHIO, 360 U.S. 252;

FLAST VS. COHEN, 392 U.S. 97;

BANK VS. SHERMAN, 101 U.S. 403;

***HECKLER VS. MATTHEWS, 104 S. CT. 1387;

BAKER VS. McCOLLAN, [redacted] 443 U.S. 137;

WICKARD VS. FILBURN, 87 L. ED 122;

**** U.S. VS. MAZE, 38 L. ED 2D 603;

NEW YORK TIMES VS. SULLIVAN, 11 L. ED 2D 686;

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U.S. VS. KAHRIGER, 97 L. ED 754; **********

BAUGHMAN VS. BRADFORD COAL CO, 592 F. 2D 215;

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PARRATT VS. TAYLOR, 451 U.S. 535;

BETTS VS. LEWIS, 15 L. ED 576;

STORY VS. LIVINGSTON, 10 L. ED 200;

***U.S. VS. RADDATZ, 447 U.S. 667;

RUNKLE VS. U.S. 122 U.S. 543;

***ROSE VS. LUNDY, 71 L. ED 2D 379;

***NORTH CAROLINA VS. PEARCE, 23 L. ED 2D 656;

BANK OF U.S. VS. WHITE, 8 L. ED 938;

F.T.C. VS. MANDEL BROTHERS, 3 L. ED 2D 893;

MALLOY VS. HOGAN, 378 U.S. 1;

***U.S. VS. WADDELL, 28 L. ED 673;

PIERCE VS. U.S. 19 L. ED 169;

***HOMES VS. SIMMONS (COOPER'S MOBILE HOMES VS. SIMMONS, 94 WN. 2D 321;)

HAGANS VS. LAVINE, 415 U.S. 528;

RULE 18 OF THE U.S. SUPREME COURT;

***HUDSON VS. PALMER, 468 U.S. 517;

***GUTIERREZ VS. MUNICIPAL COURT OF THE SOUTHEAST JUDICIAL DISTRICT, 838 F. 2D 1031;

***LOVING VS. VIRGINIA, 388 U.S. 1;

TAYLOR VS. GIBSON, 529 F. 2D 709; ******

CARTER VS. U.S. 733 F. 2D 735; ********

RE LENNON, 41 L. ED 1110; ******

TUMEY VS. OHIO, 273 U.S. 510;

***THOMPSON VS. WHITMAN, 18 WALLACE 463;

BAUER VS. STATE, 7 WN. 2D 476;

WILL VS. U.S. 389 U.S. 90;

ROCHE VS. EVAPORATED MILK, 319 U.S. 21;

***LANZETTA VS. NEW JERSEY, 83 L. ED 888;

WALKER VS. U.S. 116 F. 2D 458;

ANDERSON VS. CELEBREZZE, 460 U.S. 780;

****EVITTS VS. LUCEY, 83 L. ED 2D 821;

U.S. VS. NIXON, 418 U.S. 683;

STATE VS. GOODEN, 51 WN. APP. 615;

McGAUTHA VS. CALIFORNIA, 28 L. ED 2D 711;

***GIBSON VS. FLORIDA, 9 L. ED 2D 929;

RAST VS. VAN DeMAN, 60 L. ED 679;

ST. LOUIS VS. WIGGINS FERRY CO, 20 L. ED 192;

DOWDELL VS. CITY OF APOPKA, 698 F. 2D 1181;

STATE EX REL. TARVER VS. SMITH, 78 WN. 2D 152;

STATE VS. BROWET INC, 103 WN. 2D 215;

CARBONELL VS. LOUISIANA DEPT. OF HEALTH & HUMAN SERVICES, 772 F. 2D 185;

LITTLE VS. STREATER, 452 U.S. 1;

***BEARDEN VS. GEORGIA, 461 U.S.;

BODDIE VS. CONNECTICUT, 28 L. ED 2D 113;

BURLINGTON NORTHERN INC VS. JOHNSTON, 89 WN. 2D 321;

***P.E.R.C. VS. KENNEWICK, 99 WN. 2D 832;

CAMPBELL VS. BETO, 460 F. 2D 765;

PRIGG VS. PENNSYLVANIA, 10 L. ED 1060;

COOPER VS. AaRON, 358 U.S. 1;

***GOMEZ VS. TOLEDO, 446 U.S. 635;

***CHEVRON OIL COMPANY VS. HUDSON, 404 U.S.97;

EAKIN VS. RAUB, 12 SEARGANT & RAWLE (1825); ******

GRAVEL VS. U.S. 408 U.S. 606; ******

MYERS VS. U.S. 272 U.S. 52; ******

*****GENERAL MOTORS VS. U.S. 76 L. ED 971;

****U.S. VS. CALIFORNIA, 80 L. ED 567;

POSADAS VS. NATIONAL CITY BANK, 80 L. ED 351;

******SUN OIL CO VS. WORTMAN, 108 S. CT. 2117;

28 U.S.C. 2403 (B) & 451;

RULE 26 & 27 OF THE U.S. SUPREME COURT;

SMITH VS. CITY OF PITTSBURGH, 764 F. 2D 183;

WILSON VS. GIRARD, 354 U.S. 524;

***ROSS PACKING CO VS. U.S. 42 F. SUPP. 932;

SCHULTZ VS. ANDERSON, 191 WN. 326;

STATE VS. PAVELICH, 150 WN. 411;

***YOUNGER VS. HARRIS, 401 U.S. 37;

HINES VS. DAVIDOWITZ, 312 U.S. 52;

LEWIS VS. U.S. 61 L. ED 1039;

****UNITED PARCEL SERVICE INC VS. DEPT. OF REVENUE, 102 WN. 2D 355;

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, VS. CONNALLY, 337 F. SUPP. 737;

"THE DOCTRINE OF ULTRA-VIRES"******

THE 1881 CODE OF WASHINGTON STATE

GRAVES VS. O'KEEFE, 306 U.S. 466;

ESCAMILLA VS. CITY OF SANTA ANA, 606 F. SUPP. 928;

MASON VS. CICCONE, 531 F. 2D 867;

CORSTVET VS. BOGER, 756 F. 2D 223; *******

***URBAIN VS. KNAPP BROTHERS, 217 F. 2D 810;

STONE VS. U.S. 42 L. ED 127;

***U.S. VS. POTAMITIS, 739 F. 2D 784;

U.S. VS. MESSERLIAN, 793 F. 2D 96.

FURINA VS. GRAYS HARBOR COUNTY, 158 WN. 619;

***U.S. VS. WHITNEY, 602 F. SUPP. 722;

***MATTER OF SPENCER, 57 L ED 1010;

HOLDER VS. AULTMAN, 42 L. ED 669;

REID VS. COVERT, 1 L. ED 2D 1148;

BATES VS. McLEOD, 11 WN. 2D 648;

STATE VS. WHITTLESEY, 17 WN. 447;

***CREQUE VS. LUIS, 803 F. 2D 92;

SMITH VS. GRIMM, 534 F. 2D 1346;

LOPEZ VS. ARROWHEAD RANCHES, 523 F. 2D 924;

TIME INC VS. FIRESTONE, 47 L. ED 2D 154;

***ROSADO VS. WYMAN, 304 F. SUPP. 1356;

MARQUEZ VS. HARDIN, 339 F. SUPP. 1364;

INTERNATIONAL UNION, UNITED AUTO VS. NATIONAL CAUCUS OF LABOR, 466 F. SUPP. 564;

TROY VS. STATE, 483 F. SUPP. 235;

FAY VS. NOIA, 372 U.S. 391;

***HILL VS. ESTELLE, 423 F. SUPP. 695;

U.S. Vs Messerlian, 793 F.2d 94,'

28 U.S.C. 1361,'

Faretta Vs Calif, 422 U.S. 806,'

28 U.S.C. 2412,'

Bernard Vs Gulf Oil, 619 F. 2d 459,'

Williams Vs Edwards, 547 F.2d 1206,'

(1V). QUESTIONS PRESENTED

I. IS THE U.S. CONSTITUTION THE SUPREME LAW OF THE LAND???

2. CAN IN RE McDONALD, 103 L. ED 2D 158; CONFLICT WITH HAINES VS. KERNER, 404 U.S. 519; & U.S. VS. JONES, 48 L. ED 776; ????

3. CAN 28 U.S.C. 12 (b) (6) CONFLICT WITH 28 U.S.C. 1915 (d); ????

4. WHERE THE INTENT OF CONGRESS IS NOT CLEAR, MUST THE COURT (9th CIRCUIT) APPLY THE RULE OF LENITY??????

5. DOES THE 9th CIRCUIT HAVE SUBJECT MATTER JURISDICTION OF THIS MATTER????

6. CAN THERE BE (2) DIFFERENT, AND DISTINCT LAWS IN THE UNITED STATES, ONE LAW FOR THE RICH, AND ANOTHER LAW FOR THE (POOR) THE WRETCHED OF THE EARTH???

7. WILL THE 9th CIRCUIT EXERCISE SUPERVISORY CONTROL OVER THIS MATTER???

8. IS JUSTICE TO BE "NOW" DETERMINED BY THE AMMOUNT OF MONEY ONE HAS IN THE BANK???

9. DOES THE U.S. CONSTITUTION EMBRACE, AND COVER WITH IT'S SWEEPING MANDATE THE RICH AS WELL AS THE POOR???

10. ARE THERE COUNTERVAILING DISTINCTIONS BETWEEN 28 U.S.C. 1915 (D), & 28 U.S.C. 12(B)(6) ?

(V). SOURCES OF LAW IN SUPPORT OF POSITION/POSTURE

BLACK'S LAW DICTIONARY;

THE JUSTINIAN CODE;

THE NAPOLEONIC CODE;

THE TREASTISE OF GAIUS;

THE ANCIENT WRITINGS OF BRACTON, COKE, FLETA, BLACKSTONE, & FLETA;

THE DOCTRINE OF FEDRALISM, COMITY, AND EQUITY;

THE DOCTRINE OF INTERPOSITION,;

THE DOCTRINE OF EXPRESS AUTHORITY;

THE CODE OF HAMMURABI;

THE UNITED STATES CODE ANNOTATED;

THE ACTS OF CONGRESS;

RULES OF THE U.S. SUPREME COURT;

(VI). CONCLUSION

MY PRAYER IS THAT THE 9th CIRCUIT COURT OF APPEALS RE-CONSIDER, AND REVERSE ITS ORDER OF FEBRUARY 7th, 1991; AS THE ORDER UNFAIRLY PREJUDICES, AND PLACES A BURDEN UPON THE PETITIONER THAT CONGRESS DID NOT INTEND, CONGRESS INTENDED THAT ALL GOD'S CHILDREN, WHETHER JEW OR GENTILE, BLACK OR WHITE, RECIEVE "EQUAL PROTECTION", AND THAT EVERY MAN BE AFFORDED DUE PROCESS OF LAW, AND THAT NO WEIGHT BE PLACED ON FACTORS SUCH AS POVERTY, SKIN COLOR, OR RELIGIOUS BELIEFS....

CLEARLY 28 U.S.C. 12 (b) (6) FAVORS THE POOR, AND 28 U.S.C. 1915 (d) FAVORS THE RICH, IT IS INTRESTING TO NOTE THAT DEMOS' CAUSE OF ACTION ARISES UP UNDER 28 U.S.C. 1915 (d);

UNTIL CONGRESS CLEARLY SETS THE TABLE, AND GIVES THE GO-AHEAD, THE 9th CIRCUIT IS OUT OF LINE TRYING TO "ANTICIPATE" WHAT THE CONGRESS MAY OR MIGHT DO "IN THE FUTURE".... ACCORDING TO CONGRESS, WE HAVE NOT REACHED THAT DAY, WHEREIN THE COURT HAS STATED (STATED) THAT "JUSTICE" CAN ONLY BE HANDED DOWN TO THE ONE'S WHO ARE ABLE TO PAY FOR IT...

DO THE MANY STATUTORY CONFLICTS INVOLVED IN THE ISSUES, AND THE "VAGUENESS" OF THE CONGRESSIONAL STATUTES, I ASK THAT THE 9th CIRCUIT REVERSE ITSELF, TO PREVENT A GROSS DEPRIVATION OF DUE PROCESS & EQUAL PROTECTION UNDER THE LAW.....

/S/ John R. Demos

JOHN ROBERT DEMOS JR

IN THE

UNITED STATES COURT OF APPEALS IN

THE 9th CIRCUIT

JOHN ROBERT DEMOS JR, (PETITIONER) VS. THE STATE COURT OF APPEALS, THE STATE SUPREME COURT, AND THE UNITED STATES DISTRICT COURT; (RESPONDENT)	U.S. C.O.A. CASE NO's---90-80100; 90-80318; 90-80322; 90-80323; 90-80337; 90-80343; & 90-80344; "NOTE FOR MOTION DOCKET & CALENDAR" FOR THE 3rd FRIDAY FOLLOWING THE NOTICE OF FILING:

.....

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

HEAR YE, HEAR YE, HEAR YE;

COMES NOW THE PETITIONER HEREIN, JOHN ROBERT DEMOS JR, AND MOVES THIS HON. COURT TO NOTE FOR DOCKET & CALENDAR, THE "MOTION FOR RE-CONSIDERATION---OR IN THE ALTERNATIVE A MOTION FOR DISCRETIONARY REVIEW" FOR THE 3rd FRIDAY FOLLOWING THE NOTICE OF FILING, OR AS SOON THEREAFTER AS THE SAME CAN BE HEARD.

I BRING THIS MOTION BEFORE THE COURT IN GOOD FAITH, AND WITH CLEAN HANDS...

NEED I SAY MORE? WHERFORE PETITIONER DEMOS SAYETH NAUGHT....

IN THIS MATTER THE CLERK OF THE COURT IS REQUESTED TO "HEREIN FAIL NOT"....

181 John R. Demos

JOHN ROBERT DEMOS JR

IN THE

UNITED STATES COURT OF APPEALS IN

THE 9th CIRCUIT

JOHN ROBERT DEMOS JR, (PETITIONER) VS. THE STATE COURT OF APPEALS, THE STATE SUPREME COURT, AND THE UNITED STATES DISTRICT COURT; (RESPONDENTS)	U.S. C.O.A. CASE NO'S, #90-80100; 90-80318; 90-80322; 90-80323; 90-80337; 90-80343; & 90-80344; "MOTION FOR RE-CONSIDERATION, OR IN THE ALTERNATIVE A MOTION FOR DISCRETIONARY REVIEW" PURSUANT TO U.S. COURT OF APPEALS RULE # 27 & 6;

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

COMES NOW THE PETITIONER, JOHN ROBERT DEMOS JR, AND MOVES THIS HON. COURT FOR A "MOTION FOR DISCRETIONARY REVIEW", OR IN THE ALTERNATIVE A MOTION FOR RE-CONSIDERATION. PETITIONER JOHN ROBERT DEMOS JR, BRINGS THIS MOTION IN GOOD FAITH, AND WITH CLEAN HANDS. I AVER UNDER THE PAIN AND PENALTY OF PERJURY, THAT I AM A UNITED STATES CITIZEN, OF LEGAL AGE, SOUND MIND, AND AM COMPETENT TO BE A WITNESS HEREIN....

(1). STATEMENT OF THE CASE

ON FEBRUARY 7th, 1991 THE UNITED STATES COURT OF APPEALS ISSUED AN "EXTRAORDINARY ORDER" IN WHICH IT DOES DIRECT THE CLERK OF THE 9th CIRCUIT TO "RETURN" ANY PETITION OF DEMOS' WHICH SEEK EXTRAORDINARY RELIEF. (THE ORDER WAS UNSIGNED, AND ISSUED BY 9th CIRCUIT COURT JUDGES BROWNING, PREGERSON, AND NOONAN)...

DEMOS CONTENDS THAT THE "ORDER" OF THE 9th CIRCUIT VIOLATES ARTICLE 1-CLAUSE 9 OF THE UNITED STATES CONSTITUTION---(THE U.S. CONSTITUTION GIVES THE FEDERAL GOVERNMENT ONLY ONE SPECIFIC WAR TIME POWER, "THE ABILITY TO SUSPEND HABEAS CORPUS WRITS, WHICH IN EFFECT ALLOWS THE IMPRISONMENT OF CITIZENS WITHOUT CAUSE"....

(11). THE REASONS FOR REBUTTAL/AND RE-CONSIDERATION

A: THERE IS A "MAJOR" DIFFERENCE BETWEEN THE CASE OF JOHN ROBERT DEMOS JR, AND THE CASE OF IN RE: McDONALD, 103 L. ED 2D 158, WHICH THE 9th CIRCUIT CITES IN IT'S OPINION. FIRST OF ALL DEMOS IS STILL INCARCERATED, MR. JESSIE McDONALD WAS NOT INCARCERATED AT THE TIME THE U.S. SUPREME COURT ISSUED IT'S BAR ORDER..... DEMOS CONTENDS THAT SMITH VS. DIGMOND, 434 U.S. 332; DUGGER VS. ADAMS, 103 L. ED 2D 435; MALENG VS. COOK, 104 L. ED 2D 435; IN RE LOONEY, 134 U.S. 372; & IN RE BONNER, 151 U.S. 242 STATES THAT ONE "MUST" BE IN CUSTODY BEFORE HE CAN BE GRANTED A WRIT OF HABEAS CORPUS, DEMOS CONTENDS THAT WHEREIN MR. McDONALD FAILED TO MEET THE "IN CUSTODY REQUIREMENT", THAT HE DOES, THAT DEMOS IS IN FACT "IN CUSTODY". ALSO, MR. McDONALD'S CASE WAS CENTERED AROUND A "WRIT OF HABEAS CORPUS", WHEREIN MR. DEMOS' CASES ARE CENTERED AROUND A WRIT OF MANDAMUS..... THUS, THE 9th CIRCUIT FAILED TO SOLEMNIZE THE DISTINCTION BETWEEN A WRIT OF MANDAMUS, AND A WRIT OF HABEAS CORPUS. (I REPEAT THE U.S. SUPREME COURT ENTERED IT'S UNPRECEDENTED BAR ORDER AGAINST McDONALD IN A WRIT OF HABEAS CORPUS CASE, AND NOT A WRIT OF MANDAMUS CASE, AND JOHN DEMOS' CASE BEFORE THE 9th CIRCUIT CONCERNS A MANDAMUS, AND NOT A HABEAS CORPUS, (HABEAS & MANDAMUS ARE NOT THE SAME, THEY ARE OF THE SAME ROOT, BUT THE TASTE IS DIFFERENT).....

B: THE U.S. SUPREME COURT HAS "NEVER" DECLARED THAT "ALL" OF DEMOS' PLEADINGS WERE, AND ARE FRIVILOUS, AS WAS THE CASE WITH JESSIE McDONALD, IN 103 L. ED 2D 158; (SEE U.S. SUPREME COURT CASE NO. 90-6655).

C: DEMOS HAS NEVER IGNORED "THE LETTER & SPIRIT" OF RULE 26 OF THE U.S. SUPREME COURT, WHICH SPECIFIES PRE-REQUISITIES TO THE GRANTING OF EXTRAORDINARY WRITS, I HAVE NEVER BEEN WARNED, OR ADMONISHED BY THE U.S. SUPREME COURT (ONE) TIME, NO NOT EVER. DeLONG VS. HENNESSEY, 912 F. 2D 1144;

D: DEMOS CONTENDS THAT THE WRIT OF MANDAMUS SHOULD HAVE BEEN DENIED "WITHOUT" REACHING THE "MERITS" OF THE MOTION TO PROCEED IN FORMA PAUPERIS, AND THAT THE CLERK OF THE 9th CIRCUIT, SHOULD NOT HAVE BEEN DIRECTED TO "NOT" FILE OR ACCEPT ANY "FUTURE" PETITIONS

REASONS FOR REBUTTAL/PART. 11

FROM DEMOS IN FORMA-PAUPERIS. (THE FUTURE DENOTES A LONG TIME INDEED)...

E: THE "ORDER" OF THE 9th CIRCUIT WAS NOT SIGNED, AS IS REQUIRED BY, IN RE COVINGTON, D.C. WASH, 225 F. 444; IN RE MANCHESTER'S ESTATE, 174 CAL. 417;

F: "INDIGENTS" HAVE A CONSTITUTIONAL RIGHT TO MAINTAIN "JUDICIAL" PROCEEDINGS WITHOUT PRE-PAYMENT OF COSTS OR FEE'S. 35 L. ED 2D 834;

G: PAUPERS ARE, AND HAVE BEEN A VALUED PART OF THE COURT'S DOCKET, GIDEON VS. WAINWRIGHT, 372 U.S. 335;

H: THE 9th CIRCUIT FOR THE "FIRST" TIME IN IT'S ILLUSTRIOUS (100) YEAR HISTORY, HAS ISSUED AN ORDER, MAKING DEMOS A "TEST CASE", BY BARRING IT'S DOOR TO DEMOS "PROSPECTIVELY"... DEMOS CONTENDS THAT THE "INTENTION" OF THE U.S. SUPREME COURT WAS TO HAVE IN RE: McDONALD APPLIED PROSPECTIVELY, (ONLY TO MR. McDONALD), AND NOT RETROACTIVELY...

I: THE 9th CIRCUIT "HAS NOT" PROVED BY PERSUASIVE ARGUMENT, OR A PREPONDERANCE OF THE EVIDENCE, THAT JOHN ROBERT DEMOS JR POSES SHUCH A "THREAT" TO THE ORDERLY ADMINISTRATION OF JUSTICE AS TO EMBARK UPON SUCH AN UNPRECEDENTED & DANGEROUS COURSE; AS THE "ORDER" OF THE 9th CIRCUIT IS ONE OF "QUESTIONABLE" LEGALITY, THE FEDERAL COURTS ARE AUTHORIZED PURSUANT TO 28 U.S.C. 1915 TO PERMIT IN-FORMA PAUPERIS FILINGS.

J:28 U.S.C. 1915 IS WRITTEN "PERMISSIVELY", BUT IT ESTABLISHES A COMPREHENSIVE SCHEME FOR THE ADMINISTRATION OF IN FORMA PAUPERIS FILINGS. NOTHING IN 28 U.S.C. 1915 SUGGESTS THE 9th CIRCUIT HAS THE AUTHORITY TO ACCEPT IN FORMA PAUPERIS PLEADINGS FROM "SOME" LITIGANTS, BUT "NOT" FROM OTHERS ON THE BASIS OF HOW MANY TIMES THEY HAVE PREVIOUSLY SOUGHT OUR REVIEW. INDEED, IF ANYTHING, THE STATUTORY LANGUAGE FORECLOSES THE ACTION THE COURT TAKES TODAY. SECTION 1915 (d) EXPLAINS THE CIRCUMSTANCES IN WHICH AN IN FORMA PAUPERIS PLEADING MAY BE DISMISSED AS FOLLOWS:

REASONS FOR REBUTTAL/PART. 111

" A COURT MAY DISMISS THE CASE IF THE ALLEGATION OF POVERTY IS UNTRUE, OR IF SATISFIED THAT THE ACTION IS FRIVILOUS OR MALICIOUS", THIS LANGUAGE SUGGESTS AN INDIVIDUALIZED ASSESSMENT OF FRIVILOUSNESS OR MALICIOUSNESS THAT THE COURT'S PROSPECTIVE ORDER PRECLUDES.

AS STATED IN SILLS VS. BUREAU OF PRISONS, 761 F. 2D 792; "A COURT'S DISCRETION TO DISMISS IN FORMA-PAUPERIS CASES SUMMARILY "IS LIMITED...IN EVERY CASE BY THE LANGUAGE OF THE STATUTE ITSELF WHICH RESTRICTS IT'S APPLICATION TO COMPLAINTS FOUND TO BE FRIVILOUS OR MALICIOUS.. NEEDLESS TO SAY, "THE FUTURE" PETITIONS OR EXTRAORDINARY WRITS OF JOHN ROBERT DEMOS JR, HAVE NOT BEEN FOUND TO BE FRIVILOUS. EVEN A VERY STRONG AND WELL FOUNDED BELIEF THAT DEMOS' FUTUPE FILINGS WILL BE FRIVILOUS CANNOT RENDER A BEFORE-THE-FACT DISPOSITION COMPATIBLE WITH THE INDIVIDUALIZED DETERMINATION 1915 CONTEMPLATES....

U.S. SUPREME COURT RULE #46 GOVERNS CASES FILED IN FORMA-PAUPERIS. NO MORE THAN 28 U.S.C. 1915 DOES IT GRANT THE CIRCUIT COURT OR THE U.S. SUPREME COURT THE AUTHORITY TO DISQUALIFY A LITIGANT FROM "FUTURE" USE OF IN FORMA PAUPERIS STATUS. INDEED, RULE 46.4 WOULD SEEM TO FORBID SUCH A PRACTICE, FOR IT SPECIFIES THAT WHEN THE FILING REQUIREMENTS DESCRIBED BY RULE 46 ARE COMPLIED WITH, THE CLERK "WILL FILE" THE LITIGANT'S PAPERS, "AND PLACE THE CASE ON THE DOCKET". TODAY, THE 9th CIRCUIT COURT OF APPEALS HAS ORDERED IT'S CLERKS TO DO JUST THE OPPOSITE. (9th CIRCUIT LAW CANNOT CONFLICT WITH U.S. SUPREME COURT LAW).

OF COURSE THE U.S. SUPREME COURT IS FREE TO AMEND IT'S RULES, SHOULD IT SEE THE NEED TO DO SO, BUT UNTIL IT DOES, THE 9th CIRCUIT IS BOUND BY THE RULES OF THE U.S. SUPREME COURT.

EVEN IF THE LEGALITY OF THE 9th CIRCUIT'S ACTION REFUSING IN FORMA PAUPERIS STATUS WAS BEYOND (BEYOND) DOUBT, THE 9th CIRCUIT'S ORDER WOULD STILL BE UNWISE, POTENTIALLY DANGEROUS, AND A DEPARTURE FROM THE TRADITIONAL PRINCIPLE THAT THE DOOR TO THE U.S. COURTHOUSE IS OPEN TO ALL"....

THE 9th CIRCUIT'S ORDER PURPORTS TO BE MOTIVATED BY DEMOS' DISPROPORTIONATE CONSUMPTION OF THE COURT'S TIME AND RESOURCES. YET, IF HIS FILINGS ARE TRULY AS REPETITIOUS AS IT APPEARS, IT HARDLY TAKES MUCH TIME TO IDENTIFY THEMA AS SUCH. INDEED, THE TIME THE 9th CIRCUIT UTILIZED IN DRAFTING IT'S ORDER OF FEBRUARY 7th, 1991 BARRING THE DOOR TO DEMOS, FAR EXCEEDS THAT WHICH WOULD HAVE BEEN NECESSARY TO PROCESS HIS PETITIONS FOR THE NEXT THE NEXT SEVERAL YEARS AT LEAST.

REASONS FOR REBUTTAL/ PART. 1V.

I CONTINUE TO FIND PUZZLING THE U.S. SUPREME'S COURTS FERVOR IN ENSURING THAT RIGHTS GRANTED TO THE POOR ARE NOT ABUSED, EVEN WHEN SO DOING ACTUALLY INCREASES THE DRAIN ON THE COURTS "LIMITED" RESOURCES. BROWN VS. HERALD CO, 78 L. ED 2D 301;

TODAY'S ORDER MAKES SENSE AS AN EFFICIENCY MEASURE ONLY IF IT IS MERELY THE PRECLUDE TO SIMILAR ORDERS IN REGARD TO OTHER LITIGANTS, OR PERHAPS TO A GENERALIZED RULE LIMITING THE NUMBER OF PETITIONS IN FORMA-PAUPERIS (PAUPERIS) AN INDIVIDUAL MAY FILE. THEREIN LIES THE DANGER.

I AM MOST CONCERNED, HOWEVER, THAT IF, AS I FEAR, THE 9th CIRCUIT CONTINUES ON THE COURSE IT NOW CHARTS TODAY, IT WILL END UP BY CLOSING IT'S (IT'S) DOORS TO A LITIGANT WITH A MERITORIOUS CLAIM. IT IS RARE, BUT IT DOES HAPPEN ON OCCASION THAT WE GRANT REVIEW AND EVEN DECIDE IN FAVOR OF A LITIGANT WHO PREVIOUSLY HAD PRESENTED MULTIPLE UNSUCCESSFUL PETITIONS ON (ON) THE SAME ISSUE. CHESSMAN VS. TEETS, 1 L. ED 2D 1253;

THE 9th CIRCUIT ANNUALLY RECIEVES HUNDREDS OF PETITIONS, BUT MOST, NOT ALL OF THEM FILED IN FORMA-PAUPERIS, WHICH RAISE NO COLORABLE CLAIM (LEGAL CLAIM) WHATEVER, MUCH LESS A QUESTIONS WORTHY OF THE COURT'S REVIEW. MANY COME FROM INDIVIDUAL'S WHOSE MENTAL OR EMOTIONAL STABILITY APPEARS QUESTIONABLE. IT DOES NOT TAKE (TAKE) THE 9th CIRCUIT LONG TO IDENTIFY THOSE TYPE OF PETITIONS AS FRIVILOUS AND TO REJECT THEM. A CERTAIN EXPENDITURE IS REQUIRED, BUT IT IS NOT GREAT IN RELATION TO OUR WORK AS A WHOLE. TO RID ITSELF OF THIS ANNOYANCE, THE 9th CIRCUIT NOW NEEDLESSLY DEPARTS FROM ITS GENEROUS TRADITION AND IMPROVIDENTLY SETS SAIL ON A JOURNEY WHOSE LANDING POINT IS UNCERTAIN. WE HAVE LONG BOASTED THAT THE 9th CIRCUITS DOOR IS OPEN TO ALL. WE CAN NO LONGER.NEITZKE VS. WILLIAMS, 104 L. ED 2D 338; (THE RULE 12 (b) (6) STANDARD FOR FAILURE TO STATE A CLAIM AND THE FRIVILOUSNESS STANDARD OF 1915 (d) SERVE DISTINCTIVE GOALS, AND TO CONFLATE THOSE STANDARDS WOULD DENY INDIGENTS PETITIONERS THE PRACTICAL PROTECTIONS AGAINST UNWARRANTED DISMISSAL GENERALLY ACCORDED PAYING PLAINTIFFS UNDER RULE 12 (b) (6), AND FRUSTRATE CONGRESSES GOAL OF PUTTING INDIGENT PLAINTIFF'S/PETITIONER'S WHO OFTEN PROCEED PRO-SE AND THEREFO (THEREFORE) MAY BE LESS CAPABLE OF FORMULATING LEGALLY COMPETENT INITIAL PLEADINGS ON A SIMILAR F (FOOTING) WITH PAYING PLAINTIFFS/PETITIONER'S.... THE FEDERAL IN FORMA PAUPERIS STATUTE WAS ENACTED IN 1892, ADKINS VS. E.I. DuPONT de NEMOURS & CO, 93 L. ED 43;"JUST BECAUSE DEMOS FAILED TO STATE A CLAIM DOES NOT MEAN HIS WRIT IS FRIVILOUS, BROWER VS, INYO COUNTY, 103 L. ED 2D 628;

REASONS FOR REBUTTAL/PART. V

K: THE BREVITY OF 1915 (d) AND THE GENERALITY OF ITS TERMS HAVE LEFT THE JUDICIARY WITH THE TASK (AND IT IS NOT INCONSIDERABLE) OF FASHIONING THE PROCEDURES BY WHICH THE STATUTE OPERATES AND OF GIVING CONTENT TO 1914 (d)'s INDEFINITE ADJECTIVES.(SEE CATZ & GUYER, FEDERAL IN FORMA PAUPERIS LITIGATION: IN SEARCH OF JUDICIAL STANDARDS, 31 RUTGERS L REV 655 (1978); FELDMAN, INDIGENTS IN THE FEDERAL COURTS: THE INFORMA PAUPERIS STATUTE-EQUALITY AND FRIVILOUSNESS, 54 FORD L REV 413 (1985)... "ARTICULATING THE PROPER CONTOURS OF THE 1915 (d) TERM "FRIVOLOUS" WHICH NEITHER THE STATUTE NOR THE ACCOMPANYING CONGRESSIONAL REPORTS DEFINES, PRESENTS ONE SUCH TASK, A MOST ARDUOUS TASK INDEED. ANDERS VS. CALIFORNIA, 18 L. ED 2D 493; WHERE THE FEDERAL APPELLATE COURTS HAVE DIVERGED, AND IT IS THE DUTY OF THE U.S. SUPREME COURT TO CORRECT THIS DIVERGENCE, IS THE MATTER OF THE QUESTION OF WHETHER A COMPLAINT WHICH FAILED OR FAILS TO STATE A CLAIM UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b) (6) AUTOMATICALLY SATISFIES THIS FRIVILOUSNESS STANDARD. THE COURT SHOULD NOTE THAT IT WAS THE GREAT WILLIAM H. REHNQUIST THE CHIEF JUSTICE THAT DISSENTED IN CRUZ VS. BETO, 31 L. ED 2D 263; (THE CHIEF JUDGES DISSENT MUST NOT BE TAKEN LIGHTLY). PURSUANT TO RULE 12 (b) (6) THE COMPLAINT "CANNOT" BE DISMISSED UNTIL AFTER THE RESPONDENTS HAVE RESPONDED; HOWEVER, UNDER 1915 (d) THE COURT CAN DISMISS THE MATTER SUMMARILLY WITHOUT REQUIRING A RESPONSE FROM THE RESPONDENTS OR DEFENDANTS, THUS, THERE IS A "CONFLICT" THAT THE COURT MUST RESOLVE: (CONGRESS HAS BEEN VAGUE ON THIS ISSUE, AND THUS THE RULE OF LENITY SHOULD APPLY).
THE COURTS ARE NOT AT LIBERTY TO MAKE "POLICY", BUT RATHER TO "INTERPRET" STATUTE, IT IS CLEAR, AT LEAST IN THIS WRITER'S MIND, THAT THE 9th CIRCUIT ORDER BARRING DEMOS FROM FILING WRITS, IS CLEARLY AN ATTEMPT TO MAKE POLICY... TAKING THIS APPROACH, IT IS EVIDENT THAT THE FAILURE TO STATE A CLAIM STANDARD OF RULE 12(b)(6) AND THE FRIVOLOUSNESS STANDARD OF 1915 (d) WERE DEVISED TO SERVE DISTINCTIVE GOALS, AND THAT WHILE "THE OVERLAP" BETWEEN THESE TWO STANDARDS IS CONSIDERABLE, IT DOES "NOT" FOLLOW THAT A COMPLAINT WHICH FALLS APOUL OF THE FORMER STANDARD WILL INVARIABLY FALL APOUL OF THE LATTER". HOWEVER, DEMOS THE PETITIONER HEREIN STATES THAT THERE IS AN IRRECONCILABLE INCONSISTENCY BETWEEN THE TWO STATUTES, AND THE COURT IS COMPELLED BY "DUTY" TO INTERVENE, AS THE JUDGES OF THE COURT HAVE TAKEN AN OATH TO FAITHFULLY UPHOLD, AND DEFEND THE UNITED STATES CONSTITUTION.

REASONS FOR REBUTTAL/PART. VI

WHAT RULE 12 (b) (6) "DOES NOT" COUNTENANCE ARE "DISMISSALS" BASED ON A JUDGES "DISBELIEF" OF A COMPLAINTS FACTUAL ALLEGATIONS. HISHON VS. KING & SPALDING, 81 L. ED 2D 59; HOWEVER, 1915 (d) GRANTS JUDGES THE UNUSUAL POWER TO PIERCE THE VEIL OF THE COMPLAINTS FACTUAL ALLEGATIONS AND DISMISS THOSE CLAIMS WHOSE FACTUAL CONTENTIONS ARE CLEARLY BASELESS; WILLIAMS VS. GOLDSMITH, 701 F. 2D 603;

DEMOS CONTENDS THAT THE 9th CIRCUIT SHOULD HAVE DISMISSED HIS WRITS UNDER 12(b)(6), AND "NOT 1915 (d); THIS CONCLUSION FOLLOWS NATURALLY FROM 1915 (d)'s ROLE OF REPLICATING THE FUNCTION OF SCREENING OUT INARGUABLE CLAIMS WHICH IS PLAYED IN THE REALM OF PAID CASES BY FINANCIAL CONSIDERATIONS.THE COST OF BRINGING SUIT AND THE FEAR OF FINANCIAL SANCTIONS DOUBTLESS DETER MOST INARGUABLE PAID CLAIMS, BUT SUCH DETERRENCE PRESUMABLY SCREENS OUT "FAR LESS" FREQUENTLY THOSE ARGUABLY MERITORIOUS LEGAL THEORIES WHOSE ULTIMATE FAILURE IS NOT APPARENT AT THE OUTSET. (DEMOS CONTENDS JUST THE OPPOSITE, THAT FINANCIAL CONSIDERATIONS SCREEN OUT "FAR MORE" FREQUENTLY MERITORIOUS COMPLAINTS)...

CLEARLY THE ISSUES PRESENTED IN THIS MOTION FOR RECONSIDERATION INVOLVE CLOSE QUESTIONS OF FEDERAL LAW, AND THE U.S. SUPREME COURT HAS JURISDICTION, DUE TO THE SUBSTANTIAL NATURE OF THE ISSUE INVOLVED, TO GRANT CERTIORARI TO RESOLVE IT, ESTELLE VS. GAMBLE, 50 L. ED 2D 251; McDONALD VS. SANTA FE TRAIL TRANSPORTATION CO, 49 L. ED 2D 493; BIVENS VS. SIX UNKNOWN FED. NARCOTICS AGENTS, 29 L. ED 2D 619; JONES VS. ALFRED MAYER CO, 20 L. ED 2D 1189;

"IT CAN NEVER BE SAID THAT THE SUBSTANTIAL LEGAL CLAIMS RAISED IN THESE CASES CITED ABOVE WERE SO "DEFECTIVE" THAT THEY SHOULD NEVER HAVE BEEN BROUGHT AT THE OUTSET, TO TERM THESE CLAIMS FRIVOLOUS IS TO DISTORT MEASURABLY THE MEANING OF FRIVOLOUSNESS BOTH IN COMMON AND LEGAL PARLANCE. "A FINDING OF A FAILURE TO STATE A CLAIM DOES "NOT" INVARIABLY MEAN THAT THE CLAIM IS WITHOUT ARGUABLE MERIT". "NOT ALL UNSUCCESSFUL CLAIMS ARE FRIVOLOUS"...

PENSON VS. OHIO, 102 L. ED 2D 300; BROWER VS. INYO COUNTY, 103 L. ED 2D 628;

THE UNITED STATES CONGRESS INTENDED THAT THE "IN-FORMA-PAUPERIS STATUTE" ASSURE EQUALITY OF CONSIDERATION FOR ALL LITIGANTS, WHETHER RICH OR POOR, COPPEDGE VS. U.S. 8 L. ED 2D 21;

REASONS FOR REBUTTAL/PART. V11.

UNDER RULE 12 (b) (6) A PLAINTIFF WITH AN ARGUABLE ¶ CLAIM IS ORDINARILY ACCORDED "NOTICE" OF A PENDING MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND AN OPPORTUNITY TO AMEND, BEFORE THE MOTION IS RULED UPON.THESE PROCEDURES ALERT THE PLAINTIFF TO THE LEGAL THEORY UNDERLYING THE DEFENDANTS CHALLENGE, AND ENABLES HIM TO PROFFER A MEANINGFUL RESPONSE IN SELF-DEFENSE OF HIS PETITION; AND ALLOWS THE PLAINTIFF TO "CLAIRIFY" HIS ACTION/PETITION, THIS "ADVERSARIAL" PROCESS IS A FUNDAMENTAL PART OF THE U.S. CONSTITUTION, AND IT ALSO CRYSTALIZES THE PERTINENT ISSUES, AND FACILITATES REVIEW, BRANDON VS. DISTRICT OF COLUMBIA BOARD OF PAROLE, 734 F. 2D 56; BY CONTRAST, AND IN CONFLICT WITH 12 (b)¶6) STANDS 1915 (d); 1915 (d) "PERMITS" SUA SPONTE DISMISSALS, NECESSARY THOUGH THEY MAY BE SOMETIMES TO SHIELD DEFENDANTS FROM VEXATIOUS LAWSUITS, INVOLVE NO SUCH PROCEDURAL PROTECTIONS. THUS, THE BROAD DISCREPENCY, AND DISPARITY BETWEEN 28 U.S.C. 1915 (d); AND 28 U.S.C. 12 (b) (6) CREATES A VIOLATION OF THE 14th AMMENDMENT RIGHT TO EQUAL PROTECTION UNDER THE LAW, AND THE RIGHT TO DUE PROCESS, AS ONE STATUTE PROVIDES NOTICE AND THE RIGHT TO AMEND BEFORE DISMISSAL OF THE COMPLAINT, AND THE OTHER STATUTE DOES NOT ALLOW YOU A CHANCE TO CORRECT THE DEFICIENCY BEFORE SUS SPONTE DISMISSAL BY THE COURT. (TRULY, THERE IS A CONFLICT THAT BORDERS UPON A IRRECONCILABLE INCONSISTENCY)...

INDIGENTS, DEMOS CONTENDS SHOULD BE AFFORDED THE SAME CONSTITUTIONAL PROTECTIONS, AS ARE AFFORDED THOSE LITIGANTS WHO ARE ABLE TO PAY COURT COSTS, AND FILING FEE'S... PAYING LITIGANTS ARE AFFORDED THE PROTECTIONS OF ADVERSARY PROCEEDINGS BEFORE THEIR COMPLAINTS/PETITIONS ARE DISMISSED, HOWEVER, ON THE OTHER SIDE OF THE FENCE, INDIGENTS ARE NOT AFFORDED "ADVERSARIAL" PROTECTIONS BEFORE THEIR CASES ARE DISMISSED. (WILL THE COURT CORRECT THAT DISPARITY?)

THE 9th CIRCUIT COURT OF APPEALS ON FEBRUARY 7th, 1991 DISMISSED (7) OF PETITIONER DEMOS' EXTRAORDINARY WRITS, WITHOUT AFFORDING HIM AN "ADVERSARIAL" HEARING, OR CHANCE TO AMEND. AND ORDERED THAT THE CLERK OF THE 9th CIRCUIT WAS TO RETURN BACK TO DEMOS "UNFILED" ALL FUTURE WRITS FROM DEMOS, DEMOS CONTENDS THAT THE 9th CIRCUIT HAS NO WAY OF PREDICTING THE "FUTURE", AND WHAT AM I TO DO WHOULD (SHOULD) I BY CHANCE HAVE A MERITORIOUS WRIT AMONG THE MANY THAT I MAY TRY TO "FILE" IN THE FUTURE? YET, THE 9th CIRCUIT HAS STATED IN IT'S ORDER THAT ALL "FUTURE" PETITIONS WILL BE BARRED. (V111).

REASONS FOR REBUTTAL/PART. V111.

L: THE UNITED STATES CONGRESS' INTENTION WAS TO PUT AND OR PLACE INDIGENT PLAINTIFF'S ON THE SAME FOOTING WITH ~~@~~ PAYING PLAINTIFF'S, THUS, THE 9th CIRCUIT TODAY RUNS AFOUL IN THIS WRITER'S OPINION OF CONGRESSIONAL INTENT, AND HAS CONVERSELY, AND BY IMPLICATION, DECLARED AN ACT OF CONGRESS TO BE "UNCONSTITUTIONAL"...

ACCORDING OPPORTUNITIES FOR RESPONSIVE PLEADINGS TO "INDIGENT" LITIGANTS COMMENSURATE TO THE OPPORTUNITIES ACCORDED SIMILARLY SITUATED PAYING PLAINTIFF'S IS ALL THE MORE IMPORTANT BECAUSE INDIGENT PLAINTIFF'S SO OFTEN PROCEED PRO-SE, AND THEREFORE MAY "BE LESS" CAPABLE OF FORMULATING LEGALLY COMPETENT INITIAL PLEADINGS. HAINES VS. KERNER, 30 L. ED 2D 652;

A COMPLAINT/PETITION FILED IN FORMA PAUPERIS DEMOS CONTENDS IS "NOT" AUTOMATICALLY FRIVILOUS WITHIN THE MEANING OF 28 U.S.C. 1915 (d) BECAUSE IT FAILS TO STATE A CLAIM.

(111). MEMORANDA OF LAW IN SUPPORT

KIMBLE VS. D.J. McDUFFIE, 623 F. 2D 1060;

ROBERTS VS. CONTINENTAL INS. CO, 770 F. 2D 853;

DAVIDSON VS. NEW ORLEANS, 24 L. ED 616;

BAREFOOT VS. U.S. 463 U.S. 893;

SHIFRIN VS. WILSON, 412 F. SUPP. 1282;

SMITH VS. BENNETT, 365 U.S. 708;

ARTICLE 1V OF THE U.S. CONSTITUTION;

ROWE VS. LOCKHART, 736 F. 2D 457;

CONSOLIDATED RAIL CO VS. I.C.C. 590 F. 2D 937;

REPORTER'S COMM FOR FREEDOM OF THE PRESS VS. AMERICAN TEL & TEL CO, 593 F. 2D 1030;

U.S. VS. IRWIN, 561 F. 2D 198;

STONE VS. POWELL, 428 U.S. 465;

HARMON VS. McNUTT, 91 WN. 2D 126;

ADDLEMAN VS. BOARD, 107 WN. 2D 503;

THOMAS VS. PATE, 493 F. 2D 151;

MARTIN VS. WAINWRIGHT, 525 F. 2D 983;

BATTLE VS. ANDERSON, 376 F. SUPP. 402;

SLAUGHTERHOUSE CASES, 16 WALLACE 36;

SAWYER VS. U.S. 465 F. SUPP. 282;

BASIARDANES VS. CITY OF GALVESTON, 682 F. 2D 1203;

ELKINS VS. U.S. 364 U.S. 206;

ALLIED BANK INTERN VS. BANCO CREDITO AGRICOLA, 757 F. 2D 516;

ENGEL VS. U.S. 448 F. SUPP. 201;

JONES VS. CUNNINGHAM, 371 U.S. 236;

U.S. VS. PELTIER, 422 U.S. 531;

COHENS VS. VIRGINIA, 5 L. ED 257;

***U.S. VS. WURZBACH, 280 U.S. 396;

MEMORANDA OF LAW/PART 11

ROBERTS VS. ACRES, 495 F. 2D 57;

***LINK VS. WABASH RAILROAD CO, 370 U.S. 626;

WEEKS VS. U.S. 232 U.S. 383;

BARBER VS. PAGE, 390 U.S. 719;

ROCHIN VS. ✱ CALIFORNIA, 342 U.S. 165;

PIKOFSKY VS. JEM OIL CO, 607 F. SUPP. 727;

SCREWS VS. U.S. 325 U.S. 91;

MOSS VS. MOSS, 163 WN. 444;

EX PARTE MILLIGAN, 4 WALLACE 2,

U.S. VS. PETERS, 5 CRANCH 115;

SOVEREIGN CAMP W.O.W. VS. CASODOS, 21 F. SUPP. 989;

WOODHAM VS. AMERICAN CYSTOSCOPE COMPANY, 335 F. 2D 551;

STANDARD OIL VS. JOHNSON, 86 L. ED 1611;

AVLONTIS VS. SEATTLE DISTRICT COURT, 97 ✱ WN. 2D 131;

IN RE EVICH, 50 WN. APP. 84;

M'CULLOCK VS. MARYLAND, 4 L. ED 579;

STATE VS. KELLER, 98 WN. 2D 725;

**FERGUSON VS. SKRUPA, 372 U.S. 726;

WILVEY VS. U.S. 7 CT. CL. 305;

***HENDERSON VS. MORGAN, 426 U.S. 637;

***CANCINO VS. CRAVEN, 467 F. 2D 1243;

***WHITNEY VS. BUCKNER, 107 WN. 2D 861;

RIZZO VS. GOODE, 423 U.S. 362;

JOHNSON VS. GLICK, 481 F. 2D 1028;

MOORE VS. CITY OF EAST CLEVELAND, 431 U.S. 494;

***MISSOURI VS. HOLLAND, 252 U.S. 416;

DAVIS VS. ALASKS, 415 U.S. 308;

***SHAPIRO VS. THOMPSON, 394 U.S. 618;

MEMORNADA OF LAW/PART. 111

BOAG VS. BOIES, 455 F. 2D 467;

DOWD VS. U.S. 95 L. ED;

WINDSOR VS. McVEIGH, 93 U.S. 274;

OUTAGAMIE COUNTY VS. C.A.B. 355 F. 2D 900;

BLOCK VS. RUTHERFORD, 468 U.S. 576;

BOAG VS. MacDOUGALL, 454 U.S. 364;

FAULKNER HOSP CORP VS. SCHWEIKER, 537 F. SUPP. 1058;

N.Y. EYE & EAR INFIRMARY VS. HECKLER, 594 F. SUPP. 396;

U.S. VS. HEARST, 638 F. 2D 1194;

LAING VS. U.S. 46 L. ED 2D 416;

BAUMAN VS. U.S.D.C. 557 F. 2D 650;

EX PARTE FAHEY, 91 L. ED 2041;

U.S. VS. BARKER, 514 F. 2D 227;

HAMILL VS. HAWKS, 58 F. 2D 41;

THE PIZARRO, 2 WHEAT, 4 L. ED 226;

SEATTLE VS. RICE, 93 WN. 2D 728;

ARGERSINGER VS. HAMLIN, 407 U.S. 25;

***U.S. VS. AMERICAN BREWING CO, 1 F. 2D 1001;

***WINTERS VS. N.Y. 333 U.S. 507;

U.S. VS. CALLANAN, 173 F. SUPP. 98;

DAVENPORT VS. STATE, 543 P. 2D 1204;

ATTORNEY GENERAL VS. ELECTRIC STORAGE BATTERY CO, 188 MASS. 239; *********

KNIGHT VS. U.S. 310 F. 2D 305;

WATT VS. STARKE, 101 U.S. 252;

MASON VS. CRANOR, 227 F. 2D 557;

HURN VS. RETIREMENT FUND TRUST OF PLUMBING, 648 F. 2D 1252;

GARRITY VS. NEW JERSEY, 385 U.S. 493;

****CHESSMAN VS. TEETS, 1 L. ED 2D 1253;

LAKE CARRIERS ASS'N VS. MacMULLAN, 32 L. ED 2D 257;

***COPPEDGE VS. U.S. 8 L. ED 2D 21;

HR REP. NO. 1079 52d CONG, 1st SESS, 1 (1892);

McMAHON VS. U.S. 186 F. 2D 227;

U.S. VS. MADDEN, 352 F. 2D 792;

STEVENS VS. MARKS, 383 U.S. 243;

JORDAN VS. LOS ANGELES COUNTY, 669 F. 2D 1311;

WILLIAMS VS. VINCENT, 508 F. 2D 541;

DENT VS. WEST VIRGINIA, 129 U.S. 114;

OREGON VS. HAAS, 420 U.S. 714;

HECKLER VS. EDWARDS, 466 U.S.;

U.S. VS. BONIFACE, 601 F. 2D 390;

DOESCHER VS. ESTELLE, 616 F. 2d 205;

MARBURY VS. MADISON, 2 L. ED 60;

***SCHENCK VS. U.S. 249 U.S. 47;

ABRAMS VS. U.S. 250 U.S. 616;

WITTERS VS. U.S. 70 U.S. APP. D.C. 316;

THORNHILL VS. ALABAMA, 310 U.S. 88;

***STATE OF ALASKA VS. U.S. 563 F. SUPP. 1223;

TARLTON VS. CLARK, 441 F. 2D 384;

MACKEY VS MONTRYM, 443 U.S. 1;

WALKER VS. HUGHES, 558 F. 2D 1247;

MEACHUM VS. FANO, 427 U.S. 215;

POTTER VS. McCALL, 433 F. 2D 1087;

SHEPHERD VS. FLORIDA, 95 L. ED!

****MERCHANTS NATIONAL BANK VS. DREDGE GENERAL, 663 F. 2D 1338;

****SIMON VS. CRAFT, 45 L. ED 1165;

MEMORANDA OF LAW/PART. V

GREENE VS. CITY OF MEMPHIS, 610 F. 2D 395;

GUERNSEY VS. RICH PLAN OF MIDWEST, 408 F. SUPP. 582;

***EBERLY VS. MOORE, 16 L. ED 612;

EATON VS. TULSA, 39 L. ED 2D 693;

KATZ VS. U.S. 389 U.S. 347;

U.S. VS. BROWN, 673 F. 2D 278;

WALKER VS. HUTCHINSON, 1 L. ED 2D 178; ******

McMURTRY VS. U.S. 88 L. ED 1075;

IN RE McSHANES PETITION, 235 F. SUPP. 262;

MICHELIN TIRE CORP VS. WAGES, 46 L. ED 2D 495;

CHAPMAN VS. HOUSTON WELFARE RIGHTS ORGANIZATION, 60 L. ED 2D 508;

****CALIFORNIA EX REL. STATE LANDS COMM VS. U.S. 73 L. ED 2D 1;

FOX VS. OHIO, 12 L. ED 213;

SCOLA VS. BOAT FRANCES, 618 F. 2D 147;

***FLORASYNTH INC VS. PICKHOLZ, 750 F. 2D 171;

U.S. VS. JOHNSON, 752 F. 2D 206;

U.S. VS. JONES, 48 L. ED 776; U.S. VS. VANDUZEE, 35 L. ED 399;**********

GARLAND VS. STATE OF WASHINGTON, 58 L. ED 772;

TATUM VS. U.S. 275 F. 2D 894;

***LANE VS. BROWN, 372 U.S. 477;

BURNS VS. OHIO, 360 U.S. 252;

FLAST VS. COHEN, 392 U.S. 97;

BANK VS. SHERMAN, 101 U.S. 403;

***HECKLER VS. MATTHEWS, 104 S. CT. 1387;

BAKER VS. McCOLLAN, *** 443 U.S. 137;

WICKARD VS. FILBURN, 87 L. ED 122;

**** U.S. VS. MAZE, 38 L. ED 2D 603;

NEW YORK TIMES VS. SULLIVAN, 11 L. ED 2D 686;

[redacted] (XIV).

U.S. VS. KAHRIGER, 97 L. ED 754; **********

BAUGHMAN VS. BRADFORD COAL CO, 592 F. 2D 215;

HECHT VS. BOWLES, 321 U.S. 321;

PARRATT VS. TAYLOR, 451 U.S. 535;

BETTS VS. LEWIS, 15 L. ED 576;

STORY VS. LIVINGSTON, 10 L. ED 200;

***U.S. VS. RADDATZ, 447 U.S. 667;

RUNKLE VS. U.S. 122 U.S. 543;

***ROSE VS. LUNDY, 71 L. ED 2D 379;

***NORTH CAROLINA VS. PEARCE, 23 L. ED 2D 656;

BANK OF U.S. VS. WHITE, 8 L. ED 938;

F.T.C. VS. MANDEL BROTHERS, 3 L. ED 2D 893;

MALLOY VS. HOGAN, 378 U.S. 1;

***U.S. VS. WADDELL, 28 L. ED 673;

PIERCE VS. U.S. 19 L. ED 169;

***HOMES VS. SIMMONS (COOPER'S MOBILE HOMES VS. SIMMONS, 94 WN. 2D 321;)

HAGANS VS. LAVINE, 415 U.S. 528;

RULE 18 OF THE U.S. SUPREME COURT;

***HUDSON VS. PALMER, 468 U.S. 517;

***GUTIERREZ VS. MUNICIPAL COURT OF THE SOUTHEAST JUDICIAL DISTRICT, 838 F. 2D 1031;

***LOVING VS. VIRGINIA, 388 U.S. 1;

TAYLOR VS. GIBSON, 529 F. 2D 709; ******

CARTER VS. U.S. 733 F. 2D 735; ********

RE LENNON, 41 L. ED 1110; ******

TUMEY VS. OHIO, 273 U.S. 510;

***THOMPSON VS. WHITMAN, 18 WALLACE 463;

BAUER VS. STATE, 7 WN. 2D 476;

WILL VS. U.S. 389 U.S. 90;

ROCHE VS. EVAPORATED MILK, 319 U.S. 21;

***LANZETTA VS. NEW JERSEY, 83 L. ED 888;

WALKER VS. U.S. 116 F. 2D 458;

ANDERSON VS. CELEBREZZE, 460 U.S. 780;

****EVITTS VS. LUCEY, 83 L. ED 2D 821;

U.S. VS. NIXON, 8 418 U.S. 683;

STATE VS. COCDEN, 51 WN. APP. 615;

McGAUTHA VS. CALIFORNIA, 28 L. ED 2D 711;

***GIBSON VS. FLORIDA, 9 L. ED 2D 929;

RAST VS. VAN DeMAN, 80 L. ED 679;

ST. LOUIS VS. WIGGINS FERRY CO, 20 L. ED 192;

DOWDELL VS. CITY OF APOPKA, 698 F. 2D 1181;

STATE EX REL. TARVER VS. SMITH, 78 WN. 2D 152;

STATE VS. BROWET INC, 103 WN. 2D 215;

CARBONELL VS. LOUISIANA DEPT. OF HEALTH & HUMAN SERVICES, 772 F. 2D 185;

LITTLE VS. STREATER, 452 U.S. 1;

***BEARDEN VS. GEORGIA, 461 U.S.;

BODDIE VS. CONNECTICUT, 28 L. ED 2D 113;

BURLINGTON NORTHERN INC VS. JOHNSTON, 89 WN. 2D 321;

***P.E.R.C. VS. KENNEWICK, 99 WN. 2D 832;

CAMPBELL VS. BETO, 460 F. 2D 765;

PRIGG VS. PENNSYLVANIA, 10 L. ED 1060;

COOPER VS. AARON, 358 U.S. 1;

***GOMEZ VS. TOLEDO, 446 U.S. 635;

***CHEVRON OIL COMPANY VS. HUDSON, 404 U.S.97;

EAKIN VS. RAUB, 12 SEARGANT & RAWLE (1825); ******

GRAVEL VS. U.S. 408 U.S. 606; ******

MYERS VS. U.S. 272 U.S. 52; ******

*****GENERAL MOTORS VS. U.S. 76 L. ED 971;

****U.S. VS. CALIFORNIA, 80 L. ED 567;

POSADAS VS. NATIONAL CITY BANK, 80 L. ED 351;

******SUN OIL CO VS. WORTMAN, 108 S. CT. 2117;

28 U.S.C. 2403 (B) & 451;

RULE 26 & 27 OF THE U.S. SUPREME COURT;

SMITH VS. CITY OF PITTSBURGH, 764 F. 2D 183;

WILSON VS. GIRARD, 354 U.S. 524;

***ROSS PACKING CO VS. U.S. 42 F. SUPP. 932;

SCHULTZ VS. ANDERSON, 191 WN. 326;

STATE VS. PAVELICH, 150 WN. 411;

***YOUNGER VS. HARRIS, 401 U.S. 37;

HINES VS. DAVIDOWITZ, 312 U.S. 52;

LEWIS VS. U.S. 61 L. ED 1039;

****UNITED PARCEL SERVICE INC VS. DEPT. OF REVENUE, 102 WN. 2D 355;

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, VS. CONNALLY, 337 F. SUPP. 737;

"THE DOCTRINE OF ULTRA-VIRES"******

THE 1881 CODE OF WASHINGTON STATE

GRAVES VS. O'KEEFE, 306 U.S. 466;

ESCAMILLA VS. CITY OF SANTA ANA, 606 F. SUPP. 928;

MASON VS. CICCONE, 531 F. 2D 867;

CORSTVET VS. BOGER, 756 F. 2D 223; *******

***URBAIN VS. KNAPP BROTHERS, 217 F. 2D 810;

STONE VS. U.S. 42 L. ED 127;

***U.S. VS. POTAMITIS, 739 F. 2D 784;

FURINA VS. GRAYS HARBOR COUNTY, 158 WN. 619;

***U.S. VS. WHITNEY, 602 F. SUPP. 722;

***MATTER OF SPENCER, 57 L ED 1010;

HOLDER VS. AULTMAN, 42 L. ED 669;

REID VS. COVERT, 1 L. ED 2D 1148;

BATES VS. McLEOD, 11 WN. 2D 648;

STATE VS. WHITTLESEY, 17 WN. 447;

***CREQUE VS. LUIS, 803 F. 2D 92;

SMITH VS. GRIMM, 534 F. 2D 1346,

LOPEZ VS. ARROWHEAD RANCHES, 523 F. 2D 924;

TIME INC VS. FIRESTONE, 47 L. ED 2D 154;

***ROSADO VS. WYMAN, 304 F. SUPP. 1356;

MARQUEZ VS. HARDIN, 339 F. SUPP. 1364;

INTERNATIONAL UNION, UNITED AUTO VS. NATIONAL CAUCUS OF LABOR, 466 F. SUPP. 564;

TROY VS. STATE, 483 F. SUPP. 235;

FAY VS. NOIA, 372 U.S. 391;

***HILL VS. ESTELLE, 423 F. SUPP. 695;

U.S. Vs Messerlian, 793 F. 2d 94,'

28 U.S.C. 1361,'

FARETTA Vs CALIF, 422 U.S. 806,'

28 U.S.C. 2412,'

Bernard Vs Gulf Oil, 619 F. 2d 459,'

Williams Vs Edwards, 547 F. 2d 1206,'

(1V). QUESTIONS PRESENTED

I. IS THE U.S. CONSTITUTION THE SUPREME LAW OF THE LAND???

2. CAN IN RE McDONALD, 103 L. ED 2D 158; CONFLICT WITH HAINES VS. KERNER, 404 U.S. 519; & U.S. VS. JONES, 48 L. ED 776; ????

3. CAN 28 U.S.C. 12 (b) (6) CONFLICT WITH 28 U.S.C. 1915 (d); ????

4. WHERE THE INTENT OF CONGRESS IS NOT CLEAR, MUST THE COURT (9th CIRCUIT) APPLY THE RULE OF LENITY??????

5. DOES THE 9th CIRCUIT HAVE SUBJECT MATTER JURISDICTION OF THIS MATTER????

6. CAN THERE BE (2) DIFFERENT, AND DISTINCT LAWS IN THE UNITED STATES, ONE LAW FOR THE RICH, AND ANOTHER LAW FOR THE (POOR) THE WRETCHED OF THE EARTH???

7. WILL THE 9th CIRCUIT EXERCISE SUPERVISORY CONTROL OVER THIS MATTER???

8. IS JUSTICE TO BE "NOW" DETERMINED BY THE AMMOUNT OF MONEY ONE HAS IN THE BANK???

9. DOES THE U.S. CONSTITUTION EMBRACE, AND COVER WITH IT'S SWEEPING MANDATE THE RICH AS WELL AS THE POOR???

10. ARE THERE COUNTERVAILING DISTINCTIONS BETWEEN 28 U.S.C. 1915 (D), & 28 U.S.C. 12 (B)(6)?

(V). SOURCES OF LAW IN SUPPORT OF POSITION/POSTURE

BLACK'S LAW DICTIONARY;

THE JUSTINIAN CODE;

THE NAPOLEONIC CODE;

THE TREASTISE OF GAIUS;

THE ANCIENT WRITINGS OF BRACTON, COKE, FLETA, BLACKSTONE, & FLETA;

THE DOCTRINE OF FEDRALISM, COMITY, AND EQUITY;

THE DOCTRINE OF INTERPOSITION,;

THE DOCTRINE OF EXPRESS AUTHORITY;

THE CODE OF HAMMURABI;

THE UNITED STATES CODE ANNOTATED;

THE ACTS OF CONGRESS;

RULES OF THE U.S. SUPREME COURT;

(VI). CONCLUSION

MY PRAYER IS THAT THE 9th CIRCUIT COURT OF APPEALS RE-CONSIDER, AND REVERSE ITS ORDER OF FEBRUARY 7th, 1991; AS THE ORDER UNFAIRLY PREJUDICES, AND PLACES A BURDEN UPON THE PETITIONER THAT CONGRESS DID NOT INTEND, CONGRESS INTENDED THAT ALL GOD'S CHILDREN, WHETHER JEW OR GENTILE, BLACK OR WHITE, RECIEVE "EQUAL PROTECTION", AND THAT EVERY MAN BE AFFORDED DUE PROCESS OF LAW, AND THAT NO WEIGHT BE PLACED ON FACTORS SUCH AS POVERTY, SKIN COLOR, OR RELIGIOUS BELIEFS....

CLEARLY 28 U.S.C. 12 (b) (6) FAVORS THE POOR, AND 28 U.S.C. 1915 (d) FAVORS THE RICH, IT IS INTRESTING TO NOTE THAT DEMOS' CAUSE OF ACTION ARISES UP UNDER 28 U.S.C. 1915 (d);

UNTIL CONGRESS CLEARLY SETS THE TABLE, AND GIVES THE GO-AHEAD, THE 9th CIRCUIT IS OUT OF LINE TRYING TO "ANTICIPATE" WHAT THE CONGRESS MAY OR MIGHT DO "IN THE FUTURE".... ACCORDING TO CONGRESS, WE HAVE NOT REACHED THAT DAY, WHEREIN THE COURT HAS STATED (STATED) THAT "JUSTICE" CAN ONLY BE HANDED DOWN TO THE ONE'S WHO ARE ABLE TO PAY FOR IT...

DO THE MANY STATUTORY CONFLICTS INVOLVED IN THE ISSUES, AND THE "VAGUENESS" OF THE CONGRESSIONAL STATUTES, I ASK THAT THE 9th CIRCUIT REVERSE ITSELF, TO PREVENT A GROSS DEPRIVATION OF DUE PROCESS & EQUAL PROTECTION UNDER THE LAW.....

/s/ John R. Demos

JOHN ROBERT DEMOS JR

IN THE

UNITED STATES COURT OF APPEALS IN

THE 9th CIRCUIT

JOHN ROBERT DEMOS JR, (PETITIONER) VS. THE STATE COURT OF APPEALS, THE STATE SUPREME COURT, AND THE UNITED STATES DISTRICT COURT; (RESPONDENT)	U.S. C.O.A. CASE NO's---90-80100; 90-80318; 90-80322; 90-80323; 90-80337; 90-80343; & 90-80344; "NOTE FOR MOTION DOCKET & CALENDAR" FOR THE 3rd FRIDAY FOLLOWING THE NOTICE OF FILING:

.....

TO: THE CLERK OF THE ABOVE REFERENCED COURT;

HEAR YE, HEAR YE, HEAR YE;

COMES NOW THE PETITIONER HEREIN, JOHN ROBERT DEMOS JR, AND MOVES THIS HON. COURT TO NOTE FOR DOCKET & CALENDAR, THE "MOTION FOR RE-CONSIDERATION---OR IN THE ALTERNATIVE A MOTION FOR DISCRETIONARY REVIEW" FOR THE 3rd FRIDAY FOLLOWING THE NOTICE OF FILING, OR AS SOON THEREAFTER AS THE SAME CAN BE HEARD.

I BRING THIS MOTION BEFORE THE COURT IN GOOD FAITH, AND WITH CLEAN HANDS...

NEED I SAY MORE? WHERFORE PETITIONER DEMOS SAYETH NAUGHT....

IN THIS MATTER THE CLERK OF THE COURT IS REQUESTED TO "HEREIN FAIL NOT"....

1st John R. Demos 5

JOHN ROBERT DEMOS JR

SUPREME COURT OF THE UNITED STATES

IN RE JOHN ROBERT DEMOS, JR.

90–7225

ON PETITION FOR WRIT OF HABEAS CORPUS

JOHN ROBERT DEMOS, JR.

90–7226 *v.*

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE JOHN ROBERT DEMOS, JR.

90–7296

ON PETITION FOR WRIT OF MANDAMUS

Nos. 90–7225, 90–7226 AND 90–7296. Decided April 29, 1991

PER CURIAM.

Petitioner has filed a petition for a writ of certiorari, No. 90–7226, a petition for a writ of habeas corpus, No. 90–7225, and a petition for a writ of mandamus, No. 90–7296, all seeking relief from a single order of a lower court, which in turn denied petitioner leave to proceed *in forma pauperis* and barred petitioner from making further *in forma pauperis* filings seeking certain extraordinary writs. We deny the petition for a writ of certiorari in No. 90–7226.

Petitioner has made 32 *in forma pauperis* filings in this Court since the beginning of the October 1988 Term, many of which challenge sanctions imposed by lower courts in response to petitioner's frivolous filings. Petitioner's method of seeking relief here—filing three petitions for relief from a single order of a lower court—could only be calculated to disrupt the orderly consideration of cases. Petitioner has abused the system, and we find it appropriate to deny leave to proceed *in forma pauperis* to petitioner in these two peti-

tions for extraordinary relief, Nos. 90–7225 and 90–7296, and in all future petitions for extraordinary relief. See *In re Sindram*, —— U. S. —— (No. 90–6051, January 7, 1991); *In re McDonald*, 489 U. S. 180 (1989).

If petitioner wishes to have one or both of these petitions considered on its merits, he must pay the docketing fee required by Rule 38(a) and submit a petition in compliance with Rule 33 of the Rules of this Court before May 20, 1991. The Clerk is directed not to accept any further petitions from petitioner for extraordinary writs unless he pays the docketing fee required by Rule 38(a) and submits his petition in compliance with Rule 33. Petitioner remains free under the present order to file *in forma pauperis* requests for relief other than an extraordinary writ, if he qualifies under this Court's Rule 39 and does not similarly abuse that privilege.

It is so ordered.